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No.

SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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QUESTIONS PRESENTED

1. Whether the Texas Courts violated compelling Federal Civil Rights policy by refusing to award attorney's fees to the Petitioner, a Prevailing Party, who obtained both: (1) preliminary injunctive relief; and (2) permanent injunctive relief, the totality of relief sought. (42 U.S.C. § 1988).

2. Whether the Texas Appellate Courts, in order for those Courts to avoid a confrontation with well–settled Federal policy in Civil Rights litigation, violated the equal protection rights of the Petitioner by refusing to acknowledge, consider, rule upon and grant Petitioner's properly perfected points of error requesting an award of attorney's fees. (U.S. CONST. amend. XIV).

3. Whether the Texas Appellate Courts, in order for those Courts to avoid a confrontation with well–settled Federal policy in Civil Rights litigation, violated the Petitioner's right to due process of law by refusing to acknowledge, consider, rule upon and grant Petitioner's properly perfected points of error requesting an award of attorney's fees. (U.S. CONST. amend. V and XIV).

4. Whether circumstances recommend that the Petitioner's award of attorney's fees should, in the interest of justice, be remanded to the State District Court for recalculation.

PARTIES BELOW

In the Court below, the Petitioner herein, Greg Jones, by and through his next friend, Larry Jones, was Petitioner. The Respondents, University Interscholastic League, and the Executive Committee of District 9AAAAA, were Respondents.

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No._____

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GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

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v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, GREGORY JONES (hereinafter "Greg Jones"), A MINOR BY AND THROUGH HIS NEXT FRIEND, LARRY JONES, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Texas and the Texas Court of Appeals in this case.

OPINIONS AND JUDGMENT BELOW

The Supreme Court of Texas overruled the Petitioner's Motion for Rehearing on the 21st day of January, 1987. The Supreme Court of Texas overruled the Petitioner's Application for Writ of Error on the 17th day of December, 1986. The Court of Appeals' Opinion from which the Petitioner appealed to the Supreme Court of Texas was entered on the ~~18th~~ 23d day of ~~September~~ July, 1986.

JURISDICTION

The Order of the Supreme Court of Texas overruling the Petitioner's Motion for Rehearing was entered on the 21st day of January, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTES INVOLVED

United States Code, Title 42

Civil Rights Act

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C. § 1988

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the Court having jurisdiction of such civil or criminal cause is held as far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment of the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, Title IX of Public Law 92–318, or the VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

U.S. CONST. amend. V

"No person shall be denied due process of law or be deprived of life, liberty, or property, without due process of law."

U.S. CONST. amend. XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This Civil Rights case involves a former high school honor student's right to receive the full complement of educational development available to other, similarly situated students. The unlawful and bizarre conduct of the mature school administrators, who denied the Petitioner his educational opportunities, and, correlatively, his right to equal protection of the laws, occurred in connection with the denial of the Petitioner's request to participate in Texas interscholastic high school athletics sponsored by the University Interscholastic League (hereinafter "UIL").[1]

In the Fall of 1984, the Petitioner, then a junior in high school, moved with his family from Irving, Texas, to Highland Park, a municipality in Dallas County, Texas. As a result of the family's move, the Petitioner, Greg Jones, was required to submit a transfer request, a Previous Athletic Participation Form (hereinafter "PAP Form"), to the UIL in order to compete in UIL sponsored athletic programs at Highland Park High School (hereinafter "HPHS").[2]

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[1] This case is not a "no pass/no play" case. The Petitioner was an honor student and was well-respected by his peers and his teachers. (S.F. 541; Tr. at 48, 67–68, 71–72; Finding of Fact No. 1). A review of the Trial Court's Findings of Fact and Conclusions of Law, while brief, would be illuminating at this time. (Trial Court concluded that Petitioner's right to equal protection of the laws was violated under Supreme Court's standard announced in Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L.Ed. 220 (1886)).

[2] The PAP Form was customarily presented to the sending school [transferor–Irving] and, thereafter, presented to the receiving school [transferee–HPHS] for consideration. If both the "sending" and "receiving" schools approved the PAP Form, the request's approval was virtually automatic. In fact, no student in over thirty (30) years had been rejected

As HPHS was a member of UIL District 9AAAAA, the PAP Form was submitted to the District 9AAAAA Executive Committee (hereinafter the "Executive Committee"). The voting members of the Executive Committee were the Superintendents of the school districts constituting District 9AAAAA. In their absence, representatives of a given Superintendent would cast vote(s).[3]

The Executive Committee considered the Petitioner's PAP Form on March 20, 1985. In every other instance, a student's consideration has been perfunctory, as a fully executed PAP Form was self–proving. (S.F. at 83, 134–135, 161–62, 168–71, 208, 223–24, 281–82, 305, 403, 511; P.S.F. at 32, 85–88). Only in instances where the "sending" and "receiving" schools might not have completed the necessary documentation was there ever any question. Greg Jones' PAP Form was fully completed. (S.F. at 63–64, 552–63) (Greg Jones' application was "routine" according to the UIL's own witness, Coach Qualls). Because of the Executive Committee's rote routine, neither notice nor an opportunity to

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when both the "sending" and "receiving" schools had approved the transfer request. The particular certified PAP Form herein has been utilized for the past ten (10) years. No student, other than Greg Jones, who has submitted a fully executed PAP Form has ever been denied participation. In fact, students submitting incomplete PAP Forms have, nonetheless, been conditionally approved, so long as the PAP Form's completion was subsequently accomplished. (S.F. at 8–9, 63–64, 83–85, 134–35, 161–62, 168, 208, 236, 281–82, 305, 402, 499–500, 511; P.S.F. at 32–34, 85–91; Tr. at 46–48, 50–53; Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39).

[3] Each school district casts one (1) vote for each high school in the respective District. Thus, since the Garland I.S.D. had four (4) high schools, its four vote majority, ipso facto, controlled the seven (7) vote determination in Greg Jones' case. (S.F. at 78–79; Finding of Fact No. 5.)

be heard was provided to any applicant, including the Greg Jones' family. Greg Jones was not provided with an opportunity to be heard, despite the Garland voter's expressed predisposition to reject Greg Jones' completed application. (S.F. at 78–79, 93–96, 141, 210, 212–18, 237–56, 283, 291–93, 348, 357–58, 567–69, 576–77, 580–91, 595, 600–01; P.S.F. at 41, 72–75, 77–79, 105, 116–17; Findings of Fact Nos. 15, 29).

In this case the system went haywire. As will be revealed hereinbelow, the bizarre conduct of otherwise mature, senior school administrators is explained only by their twisted preoccupation with winning high school football games. Greg Jones was a student sacrificed on the altar of Texas high school football. The sole motive for the sacrifice of this honor student was to prevent a competitor's "potential star Quarterback" from having an opportunity to orchestrate the defeat of the other schools in District 9AAAAA.[4]

Unlike every other transfer request in the history of District 9AAAAA, the District Judge found that the Executive Committee's consideration of Greg Jones' request was infected by: (1) unauthorized ex–parte communications between the Executive Committee's voting members; (2) an infusion of rampant rumor and anonymous phone tips; and (3) blatant misrepresentations of key facts and circumstances surrounding the Jones' family move to Highland Park. (S.F. at 84–85, 134–35, 167–68, 170–71, 175, 218, 234, 511,519, 557; P.S.F. at 32–34; Findings of Fact Nos. 9–11, 13–21,

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[4] Dr. Matthews, the Superintendent of the Wilmer–Hutchins school district, candidly admitted at trial that had the Petitioner's request concerned a minor sport, other than varisty football, his request would have been approved. (S.F. at 282–83).

23–24, 26–28, 32–35, 37–39).[5] The Executive Committee's denial of the Petitioner's request was ostensibly rendered, because the Jones family's move was "for athletic purposes."[6] However, as found by the Trial Court, such "reason" lacked any indicia of integrity. (Findings of Fact Nos. 22, 27; Conclusions of Law Nos. 3–4).

The Findings of Fact by the District Court comprehensively set forth the quasi–criminal nature of these administrators' collective misbehavior in connection with this single transfer request. Greg Jones was treated differently than all other similarly situated students who have ever sought similar approval for participation in UIL extracurricular activities. The Trial Court's supportive Findings of Fact and Conclusions of

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[5] It should be noted that in a "bootstrapping" effort to purge its discriminatory, arbitrary and capricious misconduct, the Executive Committee designed a second, "ad hoc" Hearing for August 9, 1985. Such Hearing, not otherwise provided under UIL procedures, was not sought by the Petitioner, who expressed his preference to continue to seek relief through a fair and impartial judicial system. (Findings of Fact Nos. 31–32).
Ostensibly, the Second Hearing was to incorporate certain remedial safeguards in order to correct the transgressions of the First Hearing. However, few, if any, of the pretextual safeguards were respected at this Second Hearing. The District Judge condemned the Second Hearing which was infected by the First. (S.F. at 30, 34, 60–61, 66–69, 71–72, 76–77, 278–83, 285–85, 290, 294–95, 381–82, 390–91, 444–59, 462–63, 466–69, 471–88, 491–94, 496–99, 501–02, 506–13, 517–20, 523–24, 567–69, 584, 586–89, 600–01, 614, 624; P.S.F. at 36, 71–72, 118–20; S.S.F. at 4, 5–6; Tr. at 38–39; Findings of Fact Nos. 31–39; Conclusions of Law Nos. 5–6).

[6] The University Interscholastic League athletic activities are governed by the UIL Constitution and Contest Rules (hereinafter "CCR"). Rule 409 of the CCR governs transfer eligibility. It prohibits participation by those students who "move for athletic purposes." The rule, itself, provides only one example of such a move–recruiting. the UIL made no assertion of any recruiting in the instant case. (Conclusions of Law Nos. 3, 4; C.C.R., Rule 409).

Law regarding the Defendants' denial of Greg Jones' right to equal protection of the laws illuminates the Defendants' loathsome behavior towards this lone student.

First, the Executive Committee members testified at trial that ex–parte communications between voting members should not occur in connection with a student's transfer request. Yet, the UIL witnesses admitted to such improper communications under adverse examination at trial. (Findings of Fact Nos. 14–18, 23–24, 26, 33–39; Conclusions of Law Nos. 2, 5-6).

Second, the Executive Committee members testified that anonymous telephone calls are unreliable and that such communications should not be injected into administrative decisions on transfer requests. Yet, an alleged "anonymous phone call" was admittedly injected by the Chairman of the Executive Committee into the Greg Jones deliberations preceding the vote of rejection. (Findings of Fact No. 14, 24).

Third, the Executive Committee members uniformly testified that a fair and impartial hearing on a student's transfer request was absolutely essential to the fair and even–handed administration of student affairs, including the relevant transfer request. (S.F. at 18–34, 51–52, 79–80, 90–105, 107, 136–38, 144, 177–82, 203–05, 221–24, 227, 279, 289–95, 301, 347–48, 354, 357–58, 390–91; P.S.F. at 10, 29, 55, 110, 114–17, 148–50, 154–55; Findings of Fact Nos. 13–14; C.C.R. at §118 (1985)). Yet, the evidence established, and the District Judge found, that misrepresentations and irregularities riddled the March 20 and August 9, 1985 executive sessions during which Greg Jones' transfer request was summarily

rejected.[7] (Findings of Fact Nos. 9–11, 13–29, 31–39; Conclusions of Law No. 2, 5–6).

The Trial Judge was appalled at the misconduct of these senior school administrators. (S.S.F. at 3–7, 15, 19). While all of the administrators admitted to the importance of extra-curricular activities in providing a well–rounded education for young people, they went to extremes in order to arbitrarily deny Greg Jones' right to participate in those developmental activities. As unconscionable as it may seem, these adults did so with the sole objective of furthering their petty high school football aspirations. The egregious conduct of these administrators is even more bizarre given the fact that Greg Jones was not a star football player at his previous high school.

The Trial Court, upon considering the extensive evidence presented, was convinced that the arbitrary and capricious actions of these educational administrators deprived Greg Jones of ever having a fair and impartial hearing in District 9AAAAA. (Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39; Conclusions of Law Nos. 2, 5–6). The Trial Judge found that the improper actions of the Executive Committee violated the letter and the spirit of the Federal Constitutional standards expressed in Yick Wo, supra. The Trial Court took due note that the Supreme Court of Texas had recently announced that the Yick Wo equal protection standards would circumscribe the parameters of the constitutional

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[7]Furthermore, the District Judge found that the pervasive bias of the First Hearing also poisoned the Second Hearing. (Findings of Fact Nos. 31–39; Conclusions of Law Nos. 3–4; S.S.F. at 3–15, 19).

protection for students desiring to participate in extracurricular athletics.[8]

By the time of trial, the Petitioner had already obtained both a Temporary Restraining Order and a Temporary Injunction. After trial, the District Court rendered its final decision which granted a Permanent Injunction to the Petitioner. First, the Trial Court restrained the Executive Committee and the UIL from taking any action which would have prevented Greg Jones from participating in UIL–sponsored activities at HPHS. Second, the Trial Court attempted to protect HPHS from the Executive Committee, who threatened HPHS with sanctions for its mere obedience of the Trial Court's Order. (Conclusions of Law Nos. 1–7).[9]

The UIL's appeal was considered approximately one (1) year after the District Court's decision. At that time, Greg Jones had graduated, and the issue of his per se participation in HPHS activities had become moot. Nonetheless, the Court of Appeals, while holding that the case was moot, failed to

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[8] The District Court, in announcing its decision, relied extensively on this Court's pronouncements in Yick Wo, supra, as incorporated by the Texas Supreme Court in Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 559–60 (Tex. 1985), cert. denied, ___ U.S. ___, 106 S. Ct. 1170 L.Ed.2d ___ (1986). The Spring Branch I.D.S. case outlined the current constitutional parameters of students' rights to participate in extracurricular activities. In that decision, the Texas Supreme Court confirmed the rights of Texas students to equal protection of the laws under its earlier decisions and advised lower courts that an even–handed administration of the laws would be required under the standards of the Yick Wo case. Spring Branch I.S.D., supra at 559–60. Nothing less should be expected from school administrators in the 1980's.

[9] The protection of HPHS was made necessary by the threat of the Executive Committee's Chairman to impose sanctions on HPHS for following the District Court's Order should the District Court's trial decision have been overturned on appeal.

adjudicate the merits of several "live" issues which the Petitioner had preserved by an appropriate Cross–Appeal.[10]

The Petitioner, however, unlike other Texas citizens who have properly perfected points of appeal, never received a ruling on his Cross–Appeal from the Texas Appellate Courts. This unacceptable judicial evasion by these Texas Courts should be confronted by the Supreme Court. That is, should school administrators continue to perpetuate, with impugnity, such undesirable conduct and role models, the respect for individual rights would continue to deteriorate through harmful, but unchallenged, institutionalization. The youth of this nation deserve more—an unrestrained opportunity for individual development.

Action or inaction by this Court would influence, at least, Texas school administrators. Administrators must be "encouraged" to honor integrity, as they set policies which influence our youth. Frankly, the sole refuge for the wrong-doers herein is a Supreme Court that is too busy to appreciate the importance of this case. The Jones family, in Dallas, Texas, prays that justice is available.

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[10] For purposes herein, the relevant Cross–Appeal issues concerned the Petitioner's Cross–Appeal for his attorney's fees under 42 U.S.C. § 1988, and the confirmation of the Petitioner's Federal and State constitutional rights in view of the patently arbitrary and capricous conduct of the Executive Committee.

REASONS FOR GRANTING THE WRIT

I.

The Texas Courts Violated Compelling Federal Policy By Refusing To Award Attorney's Fees To The Petitioner, A Prevailing Party, Who Obtained Both: (1) Preliminary Injunctive Relief; And (2) Permanent Injunctive Relief, The Totality Of Relief Sought. (42 U.S.C. § 1988).

The Texas Courts, in an unusual twist of "justice," acknowledged the violations of Greg Jones' right to equal protection of the laws, but refused to grant him the entirety of the relief to which he was entitled.[11] The particular "live" issue in

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[11] The Trial Court found violations of equal protection. The Trial Court granted injunctive relief and found the value of reasonable and necessary attorney's fees, but denied, without justification, the fees to the prevailing party. The Court of Appeals acquiesced in the rulings of the Trial Court, but vacated the Trial Judgment, because the relief sought had been obtained, arguably rendering the injunction moot. Furthermore, the Court of Appeals refused to rule upon the properly perfected Cross–Appeal for an award of attorney's fees. The Supreme Court of Texas acquiesced in the ruling of the Court of Appeals and it, too, failed to rule upon the properly perfected Cross–Appeal for attorney's fees. Finally, as the UIL never challenged the refusal of the Court of Appeals to overturn any Finding of Fact, those facts are now binding upon the parties. Hill v. Miller, 714 S.W.2d 313, 314 (Tex. 1986); Wallace v. Scrogum, 372 S.W.2d 941, 941 (Tex. 1963). Kimbrough v. Walling, 371 S.W.2d 691, 693–94 (Tex. 1963); East Texas Motor Freight Lines v. Loftis, 148 Tex. 242, 223 S.W.2d 613, 615–16 (1949); Moore v. Dilworth, 14 Tex. 538, 179 S.W.2d 940, 942 (1944); See also Life Ins. Co. of N. Am. v. First Nat'l bank of Fort Worth, 464 S.W.2d 362, 363–64 (Tex. 1971); Smith v. Baldwin, 611 S.W.2d 611, 618 (Tex. 1981).

the history of this case remains the Petitioner's right to receive his award of reasonable attorney's fees. Greg Jones has satisfied the entirety of the prerequisites entitling him to such an award.

First, Greg Jones was a prevailing party. The Petitioner sought temporary and permanent injunctive relief from the Trial Court in order to prevent interference with his right to participate in extracurricular UIL activities at HPHS. As Greg Jones received the entirety of the injunctive relief which he sought, he satisfied the "prevailing party" standard under the Civil Rights Act. Hensley v. Eckerhart, ___ U.S. ___, 103 S. Ct. 1933, 1939, ___ L.Ed.2d ___ (1983) (A party need only succeed on any significant issue in litigation which achieves some of the benefits the parties sought in bringing suit.) Herein, the Petitioner succeeded on all "significant [i]ssues." Id.

The District Court granted the totality of the injunctive relief sought by Greg. Thus, the single remaining issue was for the District Court to have determined reasonable attorney's fees. See Doe v. Marshall, 622 F.2d 118, 120 (5th Cir. 1980) (A student is entitled to recover attorney's fees as a "prevailing party" even when only "preliminary relief" is obtained against UIL).

Fortunately, for this record, the District Court made an express finding of the reasonable and necessary attorney's fees incurred by the Plaintiff. (Finding of Fact No. 41). As each of the fee awards has been triggered by the appellate process, Fifty–Two Thousand Five Hundred Dollars ($52,500.00) of reasonable and necessary fees have been incurred by the Petitioner. Unfortunately, the unanticipated relcalcitrance of the Texas Appellate Courts has escalated the actual fees incurred to well in excess of One Hundred Thousand Dollars

($100,000.00) from this date. Such a sacrifice by the Jones family, who has a modest income, calls for significant action by this Court.

a.

Equal Protection Rights Are Extended To Interscholastic School Activities

There is no doubt that the Texas Courts, as well as Federal Courts, have recognized that the Constitutional provision for equal protection of the laws does extend to the right of students who seek self–development through extracurricular school activities. More specifically, those Constitutional equal protection rights have been extended to extracurricular athletics. See Spring Branch I.S.D., supra at 560–62 (Conduct of school administrators in managing students' extracurricular activities is to be measured by the United States Supreme Court pronouncements in, Yick Wo, supra); accord, Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981); Brenden v. Independent School District 742, 342 F. Supp. 1224 (D Minn. 1972), aff'd, 477 F.2d 1292 (8th Cir. 1973).

In finding that Greg Jones' equal protection rights were violated, the Trial Judge herein expressly applied this Court's Yick Wo, standards to the egregious facts at bar. (Conclusion of Law No. 2). Moreover, the Trial Court made none of the exculpatory findings sought by the UIL. Instead, the Trial Court expressly found:

> 1. An arbitrary and discriminatory application of Rule 409 [the Transfer Rule] which violated equal protection principles honored by the

Texas Supreme Court and the United States Supreme Court. Spring Branch I.S.D., supra; citing Yick Wo, supra; accord, Sullivan, supra (Conclusion of Law No. 2);

2. The conduct of the voting members of the Executive Committee made evident that the Petitioner did not, and could not, receive a fair and impartial consideration of his transfer request. (Conclusions of Law Nos. 2, 5–6); and

3. The Executive Committee decisions denying Greg Jones' transfer request were null and void, because of the pervasive violation of the Petitioner's equal protection guarantees. Spring Branch, I.S.D., supra. (Conclusion of Law No.6).

It is not insignificant that it was a unanimous Texas Supreme Court which adopted the Yick Wo beacon as the prophylactic by which Texas students would be protected from the arbitrary, discriminatory or capricious actions of school administrators. Spring Branch, supra. While the Executive Committee's outrageous behavior, based upon false, misleading and unwholesome conduct, directly damaged only this one student and his family, a single student and his/her respective family should be worthy of Constitutional protection. More significantly, the unrestrained tendency for bureaucracies to continue misconduct in the absence of a meaningful sanction strongly suggests that the Supreme Court must take

some reasonable action to correct an unconscionable unjustice.[12]

b.

Familial Privacy Invasion

The conduct of the Executive Committee not only violated Greg's right to equal protection of the laws, but also perpetrated an impermissible infringement upon his family's fundamental right to privacy. The reasons for the family's move from Irving, Texas, to HPHS Independent School District in Dallas, Texas, are set forth in the Trial Court's specific Findings and Conclusions. (Findings of Fact Nos. 4–8, 22, 25, 27, 38; Conclusions of Law Nos. 3–4).

The Jones family moved from Irving in order to: (1) improve its station in life; (2) alleviate the parents' hectic commuting; and (3) accommodate the demanding dental school schedule of Greg's brother. (S.F. at 273–77, 526–43). The Executive Committee's punishment of Greg Jones interfered with the Jones' fundamental right to familial privacy and constituted an additional basis for an award of attorney's fees under Section 1983 et. seq. See also Aladdin's Castle, Inc. v. The City of Mesquite, 630 F.2d 1029, 1041 (5th Cir. 1980) (The right of association is fundamental and protects associational activities related to the family).

The Trial Court's Findings that the Jones family moved for

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12 The Jones family has been severely punished for protecting Greg's constitutional rights. Again, a review of the Trial Court's Findings leaves no other conclusion for those concerned, generally, with the moral direction of our society, children and educational systems. The Texas Courts, perhaps through inadvertence, actually condoned, by inaction, the violations of the Petitioner's right to equal protection of the laws.

proper purposes, on the one hand, and did not violate the UIL's rules, on the other hand, are Findings which are worthy of protection. The right of a family to make lateral or upward social movement is basic to the intrinsic advantages of a society such as ours.

The policy underscoring much of the progressive law enacted over the last thirty (30) years has been to stimulate the ability of all Americans to realize some of their hopes and aspirations. Specifically, the Courts have implicitly recognized that unjustifiable burdens upon a family's mobility in circumstances, similar to those herein, may be worthy of Constitutional protection. See, e.g., Niles v. University Interscholastic League, 715 F.2d 1027, 1031 (5th Cir. 1983); Maroney v. University Interscholastic League, 764 F.2d 403, 406 (5th Cir. 1985).

At trial, Mr. Jones, Greg's father, testified that: (1) the meaningful fabric of his family was coming apart; and (2) the move to Highland Park greatly alleviated the economic and personal pressures upon the family; which (3) resulted in the overall improvement of the family's economic and emotional circumstances. Mr. Jones' testimony was confirmed and corroborated by other witnesses. (S.F. 273–77, 302–59, 368–79, 527–604; Findings of Fact Nos. 4–8, 22, 25, 27, 38; Conclusions of Law Nos. 3–4).

Unlike the Plaintiff in the Niles, supra case, however, Greg Jones never asserted a Constitutional right to participate in interscholastic sports. Rather, the Petitioner complained, because the established rules were not equally, reasonably, or fairly applied to him, as they were to all other students in similar circumstances. Moreover, the Petitioner had asserted violations of his family's Constitutional right to make, without unreasonable interference, those decisions relating to family

relationships, child rearing and education. See Southerland v. Thigpen, 784 F.2d 713, 175 (5th Cir. 1986) ("...[a]mong the decisions that an individual may make without justified governmental interference are personal decisions relating to family relationships ... and child rearing and education."); accord, Whalen v. Roe, 429 U.S. 589, 600 n. 26, 97 S. Ct. 869, 876–77 n. 26, 51 L.Ed.2d 64 (1977); Carey v. Population Service International, 431 U.S. 678, 684–86, 97 S. Ct. 2010, 2016, 52 L.Ed.2d 675 (1977).

Thus, Greg Jones, unlike the Plaintiff in Niles, has not used the familial privacy claim as a mere afterthought. Instead, the Petitioner's complaints regarding familial privacy violations have been constant from this suit's inception. That is, it was a genuine family motive which inspired in the move to Highland Park, and the family has suffered by virtue of the Executive Committee's reprehensible conduct.

The Executive Committee's witnesses, on adverse examination, admitted the essential societal role of a strong familial unit. (S.F. 108–09; P.S.F. at 107–109). Notwithstanding the UIL witnesses' abstract support for the family unit, the Executive Committee's actions were devastating to the Jones' family structure. The Executive Committee's actions were calloused, self–righteous and bordered on fanaticism. Absent this Court's intervention, there is no reason to believe that these egregious injustices would cease.

c.

The Texas Courts Failed to Shoulder Their Responsibility

Greg Jones was entitled to equal protection of the laws in connection with his desire to participate in extracurricular UIL activites. Second, the UIL's unjustified invasions of the Jones' familial privacy must condemned. It is undisputed that the Petitioner was a "prevailing party" in obtaining the totality of injunctive relief which was sought in the case. The Trial Court found that Fifty–Two Thousand Five Hundred Dollars ($52,500.00) would constitute reasonable and necessary fees which the Petitioner would have incurred from the trial through the Texas appellate process. (Finding of Fact No. 41).

Nonetheless, the Trial Court declined to award those fees because of its uncertainty regarding the extent of Federal protection. Under these circumstances, therefore, the failure to award attorney's fees frustrates the very important Federal policies underlying the Civil Rights Act, and that error should be corrected by the unqualified action of this Court.

II.

The Texas Appellate Courts, In Order To Avoid A Confrontation With Well-Settled Federal Policy in Civil Rights Litigation, Violated The Equal Protection Rights Of The Petitioner By Refusing To Acknowledge, Consider, Rule Upon And Grant The Petitioner's Properly Perfected Points Of Error Re-

questing An Award Of Attorney's Fees.

III.

The Texas Appellate Courts, In Order To Avoid A Confrontation With Well-Settled Federal Policy in Civil Rights Litigation, Violated the Petitioner's Due Process Rights by Refusing To Acknowledge, Consider, Rule Upon and Grant The Petitioner's Properly Perfected Points Of Error Requesting An Award Of Attorney's Fees.

The Petitioner addressed the violations of his Constitutional rights in Part I, hereinabove. The Trial Court's Findings of Fact, which support the Petitioner's entitlement, are now binding upon the parties. Supra at 13 n. 11. The UIL did not convince the Court of Appeals to overturn any of the Trial Court's Findings, and it neglected to perfect any error in that regard by presenting a Motion for Rehearing. Id.

The UIL's failure to challenge the refusal of the Court of Appeals to overturn any of the Findings of Fact resulted in: (1) a waiver of any challenge of those Findings; and (2) the Texas Supreme Court's loss of jurisdiction to review any of the UIL's complaints:

> "It is settled that a point of error in [a] motion for rehearing filed in the Court of Civil Appeals complaining of a matter determined by that Court is a prerequisite to our jurisdiction to consider and act thereon." (emphasis added).

Smith v. Baldwin, supra; accord, Wallace, supra at 941.

Yet, in order to "duck" the hard question regarding Greg's right to recover his attorneys' fees, the Texas Appellate Courts simply refused to acknowledge, consider or rule upon Greg's prefected points of error requesting an award of attorney's fees. Greg's Cross–Appeal was duly perfected, and complaint was made by an appropriate Motion for Rehearing to both the Court of Appeals and the Supreme Court. Greg Jones was, therefore, entitled to a ruling thereon.

Texas Courts have recognized that a litigant's right to have points of error considered and ruled upon is absolute. Prairie Cattle Co. v. Fletcher, 610 S.W.2d 850, 852 (Tex. Civ. App.—Amarillo 1980, no writ) (Court is "required to pass upon [perfected points of error]."); accord, Fambrough v. Wagley, 140 Tex. 577, 169 S.W.2d 478, 480 (1943); Williams v. Capital County Mutual Fire Ins. Co., 594 S.W.2d 558, 560 (Tex. Civ. App.—Ft. Worth 1980, no writ) (Court is obligated to pass on points of error, even inartfully drafted points of error).

Since the Petitioner has graduated from HPHS, the issue of his participation in UIL activites at HPHS is now moot. However, Greg Jones' graduation does not detract from the significance of his claim for attorney's fees as the prevailing party. See Hensley, supra; Doe, supra; Hennigan v. Quachita Parish School Bd., 749 F.2d 1148, 1150–51 (5th Cir. 1985) (Right to attorney's fees even if plaintiff's goal becomes moot). Finally, claims for attorney's fees, even under Texas law, are considered severable and require consideration on the merits. See Texas Employment Com'n. v. Camarena, 710 S.W.2d 665, 670 (Tex. App.—Austin 1986, no writ); accord, Texas Dep't of Health v. Hejl, 607 S.W.2d 34, 35 (Tex. Civ.

App.—Austin 1980, no writ); Walsh v. Walsh, 562 S.W.2d 501, 502–03 (Tex. Civ. App.—San Antonio 1978, no writ) Hand v. State, 348 S.W.2d 72, 74 (Tex. Civ. App.—Houston [14th Dist] 1961, no writ).

Inexplicably, the Court of Appeals' Opinion and Judgment completely ignored the legal issue of Greg Jones' entitlement to attorneys fees. See Opinion at 2–3. Yet, Texas Appellate Procedure entitles a litigant to a ruling on properly perfected points of appeal. See Prairie Cattle Co., supra; Fambrough, supra; Williams, supra. Such a judicial failure constituted another error of equal protection and due process dimensions. That is, the Court of Appeals erroneously vacated the Trial Court's Judgment and dismissed the action on the basis of mootness, while "live" issues remained for ajudication. Other citizens similarly situated have received appellate rulings on their perfected points of error. Greg Jones seeks no more than has been provided, as a matter of right, to other citizens.

IV.

The Case Should Be Remanded, For A Limited Review, To The State District Court For A Complementary Fee Award For Additional Services Rendered In This Court

The Petitioner would respectfully show that the District Court's Finding of Fifty–Two Thousand Five Hundred Dollars ($52,500.00) as reasonable and necessary attorneys fees is now binding upon the parties. However, it was not contemplated by either the District Court or any of the parties, that the Court of Appeals and the Texas Supreme Court would refuse to rule upon properly perfected points of error.

Federal policy emphasizes the need to prosecute bona fide Civil Rights Act actions. Therefore, the Petitioner would respectfully request, in the interest of justice, that this Court remand the attorney's fee issue for determination of an appropriate fee complement to be awarded for the instant Petition to the United States Supreme Court.

Ostensibly, had the lower Courts ruled upon the Petitioner's perfected points of error, the ensuing appellate expense would not have been so substantial. Certainly, the Petitioner should not have become the victim of the lower courts' failure to abide by their respective procedural obligations under State and Federal law.

The lower Courts should not be permitted to frustrate the essential goals underlying the Civil Rights Act. Their respective refusals to rule upon and grant the Petitioner his already determined attorney's fees thwart that policy. Hence, the Petitioner, the prevailing party below, would respectfully request that the Court order a limited remand.

V.

CONCLUSION

The Trial Court's Findings reveal the uncontained contagion now spreading throughout the corpus of those Texas school districts whose interscholastic activities are governed by the UIL. The Executive Committee and the UIL have not only violated this student's constitutional rights, but have, thus far, done so with absolute impunity.

Despite the UIL's admissions from the witness stand that administrative matters, such as Greg Jones' transfer request, should be handled within the bounds of fairness and due

process, the Executive Committee acted in direct contravention of its own express policies. The Executive Committee punished Greg Jones, only, because it sought to advance its own petty football aspriations. Yet, under the law, this young honor student should have been treated like all other students similarly situated.

The Jones case received a good deal of publicity in professional periodicals in the State of Texas. Educators with integrity and professional commitment must be highly embarassed by the conduct of these errant administrators. Such professional educators would not want the Supreme Court to tolerate the Executive Committee's incorrigible abuse of fundamental standards of fairness with regard to student administration.

It is true, and the Petitioner does not dispute, that recent Federal decisions have limited a student's right to participate in extracurricular activities. Yet, on the same hand, these Federal Courts have not condoned actions which have denied either equal protection under the laws or invasions of familial privacy. See, e.g., Maroney v. UIL, supra (Fifth Circuit recognizing limited rights).

Nonetheless, and it must be emphasized, this Court is not faced with: (1) a recruiting violation; (2) a student athlete with failing grades; or (3) a student who claims a Constitutional right to participate in extracurricular activities. Greg Jones is very different. The Petitioner was: (1) an honor student; (2) well–respected by his peers and teachers; (3) an exemplary student from the standpoint of citizenship and character; and (4) abided by the UIL rules in seeking to enrich his educational experience at HPHS.

The UIL witnesses testified that "King Football" in the State of Texas does offer young students a meaningful devel-

opmental experience. For example, football provides an opportunity for new associations and the development of meaningful friendships, or social relationships, as well as an understanding of teamwork and sacrifice for the benefit of others.

On the other hand, "King Football" is not, in and of itself, a justification for errant school administrators to place "greater burdens ... upon one than are laid upon others in the same condition...," or to allow the Executive Committee, without restriction, to withhold or give consent at its "near will and pleasure." Yick Wo, supra at 1070. As this Court said approximately one hundred (100) years ago, "[I]t is the execution of the regulation which constitutes the 'unjust and illegal discrimination' which should be struck down." Yick Wo, supra at 1071.

Rule 409, the "Transfer Rule," may appear fair on its face. However, as constructed, Rule 409 "reserves an arbitrary discretion in the enacting body," thus enabling such body to effect a discrimination against any class it so chooses to victimize. See Yick Wo, supra at 1069–70.

Herein, the effect of the Executive Committee's illegitimate application of Rule 409 was to consciously eradicate an imagined HPHS "darkhorse" quarterback, at the expense of an innocent student's physical and educational development. Based upon the undisputed evidence, the Executive Committee's wanton and freakish decision was not made to effectuate UIL policy, but rather to ensure Greg Jones' unavailability to HPHS. The Executive Committee's blatant discrimination violated precious rights secured by the Fourteenth Amendment. See Yick Wo, supra at 1069–72.

This case is not about football. Instead, this case stands for: (1) the right of students to be treated fairly and impartially

by school administrators who should conduct themselves in a fair and even–handed manner; and (2) preventing unjustifiable interference with an American family's right to lateral or upward social mobility. Certainly, this case should not represent, which it now does, the unfettered ability of school administrators to discriminate against students in order to foster "King Football" at the expense of protected, individual rights. This honor student, and the others who will inevitably follow, deserve a responsive judicial admonishment of the UIL. Furthermore, this Petitioner, as the "prevailing party," is entitled to an award of his significant attorney's fees.

WHEREFORE, PREMISES CONSIDERED, Greg Jones respectfully prays that the Supreme Court grant his Petition for Writ of Certiorari, that the Supreme Court reverse or modify the Judgments of the Courts below to the extent that Greg Jones recover the reasonable and necessary attorney's fees determined below, or, alternatively, that the action be remanded to the State District Court for a limited consideration as to whether or not additional attorney's fees should be awarded in connection with the Petitioner's Petition to this Court, and for such other and further relief, whether at law or in equity, to which the Supreme Court believes that Greg Jones may be justly entitled.

Respectfully submitted,
BOYD & FULTS

By _____
SAMUEL L. BOYD

By _____
PRISCILLA E. PERRY

1200 One Main Place
Dallas, Texas 75250
(214) 760–2400

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been mailed, certified, return receipt requested to Peter Nolan, Esq., counsel for Respondents, on this the 20 day of May, 1987.

_____
SAMUEL L. BOYD

86 1879

Supreme Court, U.S.
FILED
MAY 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX I

SUPREME COURT OF TEXAS RULING; COURT OF APPEALS JUDGMENT AND OPINION; FINDINGS OF FACT AN CONCLUSIONS OF LAW; SUPPLEMENTAL STATEMENT OF FACTS ("S.S.F.")

SUPREME COURT OF TEXAS

RULING

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

January 21, 1987

Mr. Samuel L. Boyd
Boyd & Fults
2001 Bryan Tower
Suite 2700
Dallas TX 75201

Ms. Priscilla E. Perry
Boyd & Fults
2001 Bryan Tower
Suite 2700
Dallas TX 75201

Mr. Peter Nolan
Bunton, Nolan, Ode & Cooper
511 West Seventh Street
Austin TX 78701

RE: Case No. C-5802

STYLE: GREGORY JONES, BY AND THROUGH HIS NEXT FRIEND, LARRY JONES v. UNIVERSITY INTERSCHOLASTIC LEAGUE ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

Mary M. Wakefield, Clerk

By: Blanca E. Morin
Deputy

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

JUDGMENT

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

UNIVERSITY INTERSCHOLASTIC LEAGUE,

APPELLANT,

v. NO. 05-85-01271-CV

GREGORY JONES, ET AL.,

APPELLEES.

JUDGMENT

In accordance with this Court's opinion of July 23, 1986, the judgment of the trial court is VACATED and this suit is DISMISSED with prejudice. It is ORDERED that each party pay its own costs in the trial court and in this court.

Jully 23, 1986.

/s/
CYNTHIA HOLLINGSWORTH
JUSTICE

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-85-01271-CV

UNIVERSITY INTER-SCHOLASTIC LEAGUE,

APPELLANT,

v.

GREGORY JONES, ET AL.,

APPELLEES.

FROM A DISTRICT COURT OF DALLAS COUNTY, TEXAS

BEFORE JUSTICES VANCE, MCCLUNG AND HOLLINGSWORTH
OPINION BY JUSTICE HOLLINGSWORTH
JULY 23, 1986

The University Interscholastic League appeals a permanent injunction restraining it from taking any action to prevent appellee, Gregory Jones, from participating in U.I.L.-sponsored games at Highland Park High School or from penalizing Highland Park High School for allowing Jones to participate in U.I.L.-

sponsored games at Highland Park. We vacate the order and dismiss the suit because the issue is now moot.

This case arose under the application of section 409 of the construction and contest rules of the U.I.L. which provides:

> a) INELIGIBLE. A student who changes schools for athletic purposes is not eligible to compete in varisty legue athletic contest(s) at the school to which he moves for at least one calendar year.

In the fall of 1984 Gregory Jones was a junior at Irving MacArthur High School and a third-string quarterback on the MacArthur football team. On November 16, 1984, the Jones family moved from Irving to a house in Highland Park. The Highland Park athletic director, fearing that Jones may have transferred to Highland Park to further his athletic career, requested that the District 9AAAAA Executive Committee meet to determine if Jones had violated rule 409.

A meeting was held on March 20, 1985, and the board determined that Jones had moved for athletic purposes

and that Jones was therefore barred from playing football his senior year at Highaldn Park. Jones, believing the board acted arbitrarily, capriciously, with bias, and in violation of his due process and equal protection rights, brought suit to void the actions of the board and to enjoin the U.I.L. from preventing him from playing football at Highland Park or from penalizing Highland Park for

allowing Jones to play. After the filing of this suit the executive committee agreed to reconvene a new panel of supposedly "neutral" members to reconsider the Jones case. This meeting was held on August 9, 1985 at which time the same conclusion was reached.

Jones's suit came to trial in September 1985. At the close of the evidence the trial court held that the board members at both the March and the August meetings were biased against Jones and that they acted arbitrarily and capriciously in ruling that Jones moved for athletic purposes. The trial court voided the actions of the board and granted the injunctive relief sought by Jones. From these actions the U.I.L. appeals.

Because of the injunction, Jones was

allowed to play football at Highland Park. Jones played the 1985 football season and he has since graduated. Therefore, the question of the impropriety of the trial court's action is now moot. Univerity Interscholastic League v. Hardin-Jefferson Independent School District, 648 S.W.2d 770, 772 (Tex. App.--Beaumont 1983, no

writ); Houston Independent School District v. Houston Teachers Association, 617 S.W.2d 765, 766-67 (Tex. App.--Houston [14th Dist.] 1981, no writ); see also Fink v. Hinson, 253 S.E.2d 757, 758 (Ga. 1979); National Collegiate Athletic Association v. Tucker, 476 A.2d 1160, 1161 (Md. 1984).

The law is settled in this state that courts are created not for the purposes of deciding abstract or academic questions of law or to render advisory opinion, but solely for the judicial determination of presently existing disputes between the parties in which an effective judgment can be rendered. City of West University Place v. Martin, 132 Tex. 354, 356, 123 S.W.2d 638, 639 (Tex. 1939); In re Ivey, 534 S.W.2d 163,

165 (Tex. Civ. App.--Austin 1976, writ ref'd n.r.e.); Greene v. Gregg, 520 S.W.2d 924, 926 (Tex. Civ. App.--Tyler 1975, no writ). As aptly stated by the Supreme Court in the case of the Brownlow v. Schwartz, 261 U.S. 216, 217 and quoted by our supreme court in City of West University Place:

> This court will not proceed to determination when its judgment would be wholly ineffectual . . . . An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other.

123 S.W.2d at 638.

For us to affirm the judgment would require us to order that Greg Jones be allowed to play football for Highland Park in 1985. Greg Jones has already done so. Likewise, for us to order a reversal would require us to order that Jones be prohibited from playing football for Highland Park in 1985. The absurdity of such an order is apparent.

For the reasons above stated, the judgment of the trial court is vacated and this suit is dismissed. University Interscholastic League v. Sims, 133 Tex.

605, 131 S.W.2d 94 (1939). Since this case became moot while on appeal, the costs of court incurred in both the trial and appellate court by each party are taxed against the parties incurring such costs. Greene, S.W.2d at 927; Hinojosa v. Garcia, 260 S.W.2d

711, 712 (Tex. Civ. App.-- San Antonio 1953, no writ).

/s/
CYNTHIA HOLLINGSWORTH
JUSTICE

PUBLISH

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

NO. 85-5676

GREGORY JONES, A Minor, By and Through his Next Friend, LARRY JONES,	§	IN THE DISTRICT COURT
Plaintiff	§	
V.	§	OF DALLAS COUNTY, TEXAS
UNIVERSITY INTERSCHOLASTIC LEAGUE, AND THE EXECUTIVE COMMITTEE, DISTRICT 9AAAAA, OF THE UNIVERSITY INTERSCHOLASTIC LEAGUE,	§	
Defendants	§	193RD JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having indicated its desire to enter Findings of Fact and Conclusions of Law is of the opinion that the following was established at the trial of this cause:

FINDINGS OF FACT

1. The Plaintiff Gregory Jones was

an honor student, student leader and athlete while attending Irving MacArthur High School in Irving, Texas, through November of 1984.

2. Gregory Jones' family moved in November of 1984 from the Irving MacArthur Independent School District to the Highland Park Independent School District.

3. As a result of the family's move, Gregory Jones left behind his friends, church and his opportunity to play on the starting lineup on the varsity basketball team during the 1984-85 season.

4. The Jones' family moved from Irving to Highland Park in order to improve the quality of the family's life and reduce living expenses and to facilitate another son's attendance at Baylor Dental College.

5. The Jones' family retained ownership of their home in Irving on the basis of advise offered by Larry Jones' aunt

who was allowing them to rent an otherwise vacant home in Highland Park in order to work out the family's problems.

6. The Jones' family moved in November, 1984, because until that date the house in Highland Park was not ready for occupancy, and Gregory's parents did not want to unnecessarily interfere with Greg's grading periods.

7. The Jones' family did not move to Highland Park in order that Gregory Jones could participate in athletics at Highland Park High School, and the Jones' family had no contact with any Highland Park representatives prior to their move.

8. Subsequent to the Jones' family's move to Highland Park, another student, also for family reasons, transferred from the Garland Independent School District to the Highland Park Independent School District, an even shorter move, and was approved for athletic participation.

9. Gregory Jones is the only stu-

dent transfer request which has ever been denied in District 9AAAAA when both the sending and receiving school administrations have given approval of the transfer, and Gregory Jones is the only student transfer applicant who has been subjected to an evidentiary hearing in order to obtain district approval of a transfer request.

10. All other student transfer requests which have been approved by both the sending and receiving school administrations have been approved without evidentiary hearings in District 9AAAAA.

11. All other student transfer requests have been approved solely on the basis of written documentation; principally, the completion of the Previous Athletic Participation Form which was properly completed by the Jones' family; even so, other students have been conditionally

approved without completed paperwork.

12. Gregory Jones' student transfer request was initially considered and denied by a final vote of the District 9AAAAA Executive Committee on March 20, 1985.

13. District Executive Committee considerations of student transfer requests are to be impartial, fair and

based upon credible evidence produced at the hearing.

14. The denial of Gregory Jones' student transfer request by the District 9AAAAA Executive Committee on March 20, 1985, was not impartial, not fair and not based upon credible evidence, but rather was pervasively infected with bias, prejudice and unfair presentations of information which included hearsay representations, anonymous telephone calls, misrepresentations of relations between the Jones' family and the coaching staff at Irving MacArthur, and conscious factual non-disclosures of favorable facts which should have been made in order to provide a fair and impartial forum.

15. The pervasive unfairness of the District 9AAAAA Executive Committee meeting on March 20, 1985, was produced in

part by inappropriate ex-parte consultations between at least Coach Qualls, of the Mesquite Independent School District, and Coach Johnson, of the Garland Independent School District, whose voting intentions were known by Coach Qualls prior to the March 20, 1985 meeting at which evidence was to be considered.

16. At the March 20, 1985, meeting Coach Qualls inaccurately represented the nature of the relationship between Coach Overton and the staff at Irving MacArthur High School, on the one hand, and Gregory Jones and his family, on the other hand, in the following manner:

A. Coach Qualls reported that Mr. Jones had advised Coach Overton that Mr. Jones was moving to Highland Park in order that his son could obtain a better opportunity to play football, contrary to Coach

Overton's sworn testimony;

B. Coach Qualls reported that the relationship between Coach Overton, on the one hand, and the Jones' family, on the other hand, was one of conflict or "bad blood", contrary to Coach Overton's sworn testimony;

C. Coach Qualls inaccurately reported that Gregory Jones had been in constant competition with Shawn Hall, another Irving football player, since junior high school, and that Shawn Hall had always prevailed, when sworn of testimony of Coach Overton demonstrated that the two

young men, who have always been on friendly terms, had not even been in direct competition until the Fall of 1984 in their junior years at Irving MacArthur High School;

D. Coach Qualls inaccurately reported that in 1984 at Irving MacArthur High School Gregory Jones and Shawn Hall were involved in a "quarterback controversy" which allegedly divided the boys, the team, the Booster Club, and fans, contrary to Coach Overton's sworn testimony.

17. After Coach Quall's misrepresentations of Coach Overton's comments, which directly conflicted with Coach Overton's certification on the Previous Athletic Participation Form, at the March 20, 1985 District 9AAAAA Executive Committee meeting, suggestions were made that Coach Overton be contacted and asked to withdraw his approval

or allowed the opportunity to explain the dramatic conflict between Coach Qualls' report and the Coach Overton's certification that the Jones' family had not moved for "athletic purposes;" however, the suggestions for direct evidence from Coach Overton were neither encouraged nor well received by the representatives from Mesquite and Garland which, together represented six (6) of the seven (7) votes at the meeting.

18. Coach Overton of Irving MacArthur testified under oath and discredited the major contentions which Coach Qualls had inaccurately represented at the March 20, 1985, District 9AAAAA Executive Committee meeting and included the following material facts:

A. Coach Overton was not told by Mr. Jones that the Jones' family was moving to Highland Park in order for Gregory Jones

to have a better chance of playing football.

B. There was no conflict or "bad blood" between the Jones' family, on the one hand, and Coach Overton or his staff, on the other hand; to the contrary, Coach Overton had very little contact with the Jones family, considered them loyal and friendly boosters, considered Gregory a fine young honor student at Irving MacArthur, a student leader, a good athlete, and a young man without personal conflict with Coach Overton;

C. Coach Overton confirmed that the two boys had competed against one another very little until they were juniors at Irving MacArthur because

(1) on separate teams in the eighth grade;

(2) in the ninth grade Gregory Jones did not play football, and Shawn

Hall was absent from the State of Texas;

(3) the two boys were on different football teams in the tenth grade; and

(4) the two boys had an equal chance of becoming the first string quarterback for the Fall, 1985 football season at Irving MacArthur;

D. There was no "quarterback controversy" at Irving MacArthur in the fall of 1984 between Gregory Jones and Shawn Hall which allegedly divided the boys, the team, the boosters or the fans; to the contrary, the athletic relationship between the two boys was nothing more than healthy competition for the second string quarterback position and no divisive consequences resulted from that competition;

19. Dr. Ralph Poteet's testimony

denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

20. Coach Homer Johnson's testimony denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

21. Coach Charles Qualls' testimony denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

22. The testimony of Coach Ray Overton, the Irving MacArthur football coach, Mr. Hobart Lytal, the Athletic Driector at

the Irving Independent School District, and Mr. Larry Jones on material facts was direct, unimpeached and supported the original

certification by both the sending and receiving schools that the Jones' family had not moved "for athletic purposes."

23. The testimony of Garland and Mesquite representatives discloses that the Gregory Jones' transfer request did not, and could not, receive a fair and impartial consideration by the presently constituted Executive Committee in the District 9AAAAA.

24. The voting members of the District 9AAAAA Executive Committee on March 20, 1985, admittedly relied upon, and were influenced by, Coach Qualls' inaccuracies and Dr. Poteet's presentation of an anonymous phone call concerning an unidentified Irving MacArthur football player.

25. There was no recruiting of Gregory Jones by Highland Park High School reprsentatives.

26. At the March 20, 1985, District

9AAAAA Executive Committee meeting, Coach Johnson, voted and directed the majority vote, required that the Jones' family prove to him "beyond a shadow of a doubt" that they had not moved "for athletic purposes," which is unreasonable, unfair and unjust evidentiary standard which in District 9AAAAA transfer deliberations has only been imposed upon Gregory Jones.

27. In addition to the inaccuracies and nondisclosures by Dr. Ralph Poteet, Coach Charles Qualls and Coach Homer Johnson, no more than a scintilla of evidence could have indicated a move by the Jones family "for athletic purposes," had the forum been a fair, reasonable and impartial forum which it was not.

28. Subsequent to the denial of Gregory Jones' transfer request on March 20, 1985 by the District 9AAAAA Executive

Committee, Dr. Ralph Poteet purported to conduct a personal investigation and render an impartial follow-up report to the voting members in order to determine whether or not they desired a reconsideration of the Jones' request, as is reflected in Plaintiff's Exhibit No. 8; instead, his letter dicloses a continuing bias, prejudice and inexplicable intention to unfairly

deny Gregory Jones a fair and impartial forum for his transfer request in that Dr. Poteet: (1) inaccurately reported his conversations with Hobart Lytal; (2) failed to disclose information favorable to the Jones' position; and (3) inaccurately reported that he had contacted school administrators who testified at trial that no such contact had been made.

29. No member of the Jones' family was given either notice or an opportunity to participate at the March 20, 1985 District 9AAAA Executive Committee meeting, despite the fact that Mesquite and Garland representatives were negatively inclined before hearing any evidence at the hearing.

30. Subsequent to the pervasively biased and prejudiced proceedings and decision, the arbitrary action, and the abuse of discretion by the District 9AAAAA Executive Committee on March 20, 1985, the Plaintiff

filed his suit with Application for Injunctive Relief on April 25, 1985.

31. Subsequent to the Plaintiff's filing of suit, and the taking of depositions of the executive committee members by Plaintiff's counsel, Dr. Ralph Poteet and Mr. Peter Nolan, counsel for the UIL, represented to the Plaintiff that he would be offered a fair and impartial consideration at another hearing, although the Plaintiff through his counsel made evident his preference for the impartiality of the judicial system over the already demonstrated bias of the District 9AAAAA Executive Committee.

32. Despite the Plaintiff's rejection of the offer for another hearing, the District 9AAAAA Executive Committee made evident through their counsel that an additional hearing on Gregory Jones' transfer request would nonetheless be held by an allegedly

independent, uninformed and unbiased panel of school representatives on August 9, 1985; yet, no screening for bias or prejudice was conducted as promised.

33. Five of the seven principals who represented the District 9AAAAA high schools at the August 9, 1985, ad hoc meeting

were not credible in their standardized testimony that they knew nothing, had heard nothing and had seen nothing of the Gregory Jones' transfer issue at the time of the second hearing on August 9, 1985; rather, several of the witnesses on adverse examination reflected unreasonably conflicting reports of conversations which occurred in their joint presence and indicated some advance knowledge of the nature of the meeting of which they were allegedly unaware.

34. Coach Charles Qualls and Coach Homer Johnson whose actions constitued the majority of the pervasive bias, prejudice and unfairness at the March 20, 1985 meeting, objectively deprived the August 9, 1985 committee of possible impartiality or fairness by:

A. Conferring with panel members on

the hearing subject matter during breaks in testimony; and

B. Maintaining an influential presence at the evidentiary meeting.

C. Advising panel members regarding questioning of witnesses.

35. Mr. David McNabb, a newspaper reporter without a stake in the outcome of this proceeding, reluctantly testified and confirmed the improper communications which occurred between the allegedly impartial committee and Coaches Qualls and Johnson during testimonial breaks on August 9, 1985.

36. The Plaintiff and his father appeared at the August 9, 1985 District 9AAAAA Executive Committee meeting for the reason that the District had indicated that the meeting would be convened and the Jones' request would be considered irrespective of the Plaintiff's presence.

37. Counsel for the UIL, who stipulated to the impropriety of the March 20, 1985 hearing, accepted the charge of insuring that impartial proceedings were to have been convened at the August 9, 1985 meeting; however, counsel, himself was responsible for continuing prejudice by proposing an alleged "quarterback controversy" by the form of his questions, despite the uncontradicted testimony of Coach Overton that no such contro-

versy existed.

38. The ad hoc representatives of the District 9AAAAA Executive Committee meeting on August 9, 1985 were presented with not more than a scintilla of evidence, being the continued ownerhip of the Irving home and the rental of the Highland Park home, which could have indicated a possible move "for athletic purposes," while the overwhelming credible evidence from the Jones' family, Coach Ray Overton and the Previous Athletic Participation Form made evident that the Jones' family move was not "for athletic purposes."

39. On the basis of the substance and the credibility of the witnesses who testified on matters occurring in connection with the August 9, 1985, ad hoc District 9AAAAA Executive Committee meeting, it is evident that the pervasive bias, prejudice

and unfairness present in the March 20, 1985 meeting was transferred to, and became a part of, the August 9, 1985 meeting; therefore, Gregory Jones was once again subjected to an arbitrary denial and an abuse of discretion by the partial ad hoc committee.

40. At no time since the filing of this action on April 25, 1985 has the Plaintiff taken any action calculated to voluntarily relinquish any rights or privileges which he may have in pursuing relief through judicial proceedings.

41. The reasonable and necessary attorney's fees incurred by the Plaintiff in prosecuting this action through the trial is the sum of $40,000.00; if required to respond to any appeal to the Court of Appeals, an additional fee of $7,500.00 would be reasonable and necessary; and if required to defend the Judgment of this Court in the

Supreme Court of Texas, an additional award of $5,000.00 would be reasonable and necessary, however, the trial court makes no award of attorney's fees.

Conclusions Of Law

1. The 193rd Judicial District Court has jurisdiction of the matter.

2. The conduct of the proceedings and the discretion exercised by the District 9AAAAA

Executive Committee on March 20, 1985 and on August 9, 1985, as supported by the Findings of Fact herein, constitued an arbitrary and discriminatory application of Rule 409 which is violative of equal protection principles honored by the Texas Supreme Court in Spring Branch I.S.D. v. Stamos, 28 Tex. Sup. Ct. J. 554 (1985); citing, Yick Wo v. Hopkins, 118 U.S. 356 (1886); accord, Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981) and denial of hearing by a fair an impartial tribunal.

3. The Jones family did not move "for athletic purposes" within the prohibitions of Rule 409 of the Constitution & Contest Rules of the University Interscholastic League.

4. Gregory Jones was not recruited within the meaning of Rule 409 of the Constitution & Contest Rules of the

University Interscholastic League.

5. The conduct of the voting members, and their associates, in the March 20, 1985 and August 9, 1985 District 9AAAAA Executive Committees which met on the Rule 409 student transfer request of Gregory Jones made evident that Gregory Jones did not, and could not, receive a fair and impartial consideration on his transfer request in District 9AAAAA.

6. The decisions of the District 9AAAAA Executive Committees which met on March 20, 1985 and August 9, 1985 in connection with the Gregory Jones transfer request are null and void, because of the pervasive violation of Gregory Jones' equal protection guarantees of the Texas Constitution as identified in Spring Branch I.S.D. v. Stamos, 28 Tex. Sup. Ct. J. 554 (1985).

7. The University Intershcolastic

League is not entitled to any relief herein.

SIGNED this 27th day of October, 1985.

JUDGE PRESIDING

SUPPLEMENTAL STATEMENT OF FACTS

"SSF"

NO. 5676-L

GREGORY JONES	*	IN THE DISTRICT COURT
VERSUS	*	OF DALLAS COUNTY, TEXAS
UNIVERSITY INTERSCHOLASTIC	* *	193RD JUDICIAL DISTRICT

SUPPLEMENTAL STATEMENT OF FACTS
MOTION TO MODIFY AND FOR RECONSIDERATION
September 30, 1985

A P P E A R A N C E S:

MR. SAM BOYD
Attorney at Law
Dallas, Texas

APPEARING FOR THE PLAINTIFF

MR. PETER A. NOLAN
Attorney at Law
511 West 7th St.
Austin, Texas 78701

APPEARING FOR THE DEFENDANT

BE IT REMEMBERED, that on the 30th day of September, 1985, the above styled and numbered cause came on for trial before the HONORABLE JOHN WHITTINGTON, Judge of the 193rd Judicial District Court of Dallas

County, Texas, and the followings proceedings were had:

the opinion, and I would so find that there was some evidence that the hearing body could have relied upon to make their ruling. Therefore, I was not basing my ruling on an absence of any evidence upon which they could have formed their opinion.

There may be other grounds upon which I grant the injunction, but the one that I most was aware of was that I found that the hearing body conducted the hearing and the preparation in a manner that demonstrated pervasive bias. That it would be reflected in numerous acts of the Chairman of the Board Dr. Poteet, by his delegate -- I've forgotten -- the gentlemen is here, but I can't think of his name. Mr. Qualls. His conduct the Court considered to be repeatedly unfair in his presentation of the information regarding his dealings with Coach Overton, with hearsay representations that were made

in the first hearing. Those were related by Dr. Poteet.

Anonymous telephone calls were presented to the determining body, and Dr. Poteet said, and I'm aware that you cannot fully disregard anonymous statements, but none the less he went ahead and presented them to the determining body.

That at that hearing it was suggested that Coach Overton be given an opportunity, in view of what Mr. Qualls said, that there was hostility and conflict between the parents, and that that had been one of the orgins for the transfer because -- and the coach. This was obviously in conflict such as we call the Parol Evidence Rule. He had signed a

recommendation transfer that it was not for athletic purposes, nor was there any indication of recruiting involved.

Further, the failure for a fair and impartial hearing to have been conducted was reflected by -- Mr. Boyd, I'm sure will know the name, either Mr. Johnson or Thompson, who said under oath that his standard for non-athletic transfer was beyond a shadow of a doubt, which is an unacceptable standard for anyone to apply. Beyond a shadow of a doubt is not a legitimate standard to apply in any inquiry unless you are dealing with a criminal matter.

Further, even though the UIL attorney did carefully seek to remedy the hearing, and there was some evidence that the second hearing was an attempt to obtain an impartial hearing, none the less the same two gentlemen, with whom I have just referred to, were

delegates of Dr. Poteet, met and conferred with the voting members of the second constituted body an suggested to them or counseled with them as to questions to be asked to the witnesses.

This reflected another continuation of the undue influence by these parties, a lack of pervasive fairness, and there were numerous other instances of this conduct.

So consequently, just as in Yick Wo, a search of this record will reflect testimony under oath by these parties that this Court considers that the entire conduct of the hearing was one that was biased against the transfer request. Why, I do not

know. I don't go to the motives of it.

But none the less, the only thing I can guess is it was an authoritarian response. We all know what authoritarian response it. It's: Don't ask me why I do it, I'm telling you this is it. That's known as an authoritarian response. That is what I sort of preceived throughout this proceedings.

Now, those are my overview, and that was because we didn't have time. This is what I would have said at the conclusion of that other hearing. I told Mr. Boyd, I said: Draft an order with findings.

Well, I left out one. No, I didn't. And also that Garland had four votes, which was proper. I mean that was the numerical correct vote. But they were cast in the first proceedings by the gentlemen who stated that it would have to be shown to him beyond

a shadow of a doubt that the transfer was not for athletic reasons. And I believe he cast all four of them the first time.

And then it also goes beyond well reasonable conclusions to assume that all of the principals of all of these schools knew nothing about this. These all had athletic directors, all of them had coaches, everybody came up her and said: We didn't know anything about it except that it was within their system. Their own athletic directors had already acted upon it. And taken in connection with all of the other evidence, I just could not comprehend them all saying the same

thing. It was just stretching matters as far as this Court was concerned.

Now, I do find that there was some evidence. Some evidence upon which they could have based their decision was the fact that the parties did retain their property in Irving and they moved to rented property that was made available to them by a family member. That to me is circumstantial evidence. And it is some evidence upon which their ruling could have been based, so I am not holding that there was no evidence. There was some evidence.

But I am ruling that there was a pervasive bias in the conduct of the hearing and that Mr. Boyd will probably be able to give you more than I have delineated. Those are simply ones that I carried in my mind after hearing the evidence for nearly five days.

Now, are you willing to agree to some of the requests for modification of judgment that he has asked?

MR. NOLAN: I have not seen any.

THE COURT: Well, why don't you look at it. You might be willing to agree. I'm satisfied that my ruling, there's plenty evidence in the record of what I've said. If what I've said is wrong, then the appellate court can look right at it and say: Well, you can look at those things under oath and they don't make any difference. And if they want to say that, they can say it. But fair and impartial means that you

don't have a predisposition, you don't have a predisposition when you go into a hearing. And if you don't have a predisposition, then you don't do the things that this body did is what my conclusion of the matter was.

MR. BOYD: Fortunately, I think much of this is rehash, with that generally we would agree. But nothing in here at this time is nothing of the nature that would be compatible with the Court's findings.

THE COURT: I understand that. I've now given you my recollection. I'll hear from Mr. Nolan, if you would like, and then hear from Mr. Luna about, if you want to point out to me the error of my ways.

MR. NOLAN: I have a question first, your Honor. Let me hand you this. I'm unclear on one point. You said there was some evidence from which the District Executive Committee could have made that

hearing.

THE COURT: Yes, sir.

MR. NOLAN: But that since they were biased --

THE COURT: That is correct.

MR. NOLAN: So am I correct in saying that had there not be a finding of bias, that the Court's ruling would have been different?

THE COURT: Yes, sir.

MR. BOYD: They've got a motion to modify. Do you want to hear my motion for reconsideration?

discretion. And that's what this Court is talking about. So you can have compeling evidence, but if you don't have an impartial tribunal it doesn't make any difference. In this case, everyone is entitled to an impartial hearing.

THE COURT: The Court will find that there was no compeling evidence. There was only a scintilla of evidence and that most of it was hearsay, most of it was contrary to the direct evidence of Coach Overton, to the parents, and everything, and it was simply statements of -- that what he said isn't true.

And as you recall, the gentlemen took the stand and said: And he's told me if he was called upon under oath he would deny that he said it. This is a deliberate effort to under cut another man's credibility, a peer, which I consider to be a devastating

thing to do to a peer. A devastating...

MR. BOYD: The only thing that we are here today on after commenting on Mr. Luna's comments, and I will get to the Court those cases providing that you should not supersede the injunction, is that we have requested in our motion to modify the final judgment a couple of things.

Number one, Highland Park has been advised, and I don't think there's any dispute at this point, that if they allow Greg Jones to play, and he did suit up Friday night, didn't get to play, but if they allow him to play, that there's another penalty proceedings in the UIL rule which I attached to

that's not a constitution right at all and that therefore --

THE COURT: I found it was pervasive bias, more than just simple bias.

MR. LUNA: Yes, sir.

THE COURT: It stuck its head up at every point.

MR. LUNA: I understood the Court's finding. But that's a finding based on the bias in the hearings, and is not a Civil Right violation and the pleadings don't even ask for 1983 relief and it's just not that kind of case.

THE COURT: Mr. Luna, if the authorities that you quote on supersedeas say that the Court must set a supersedeas bond, then I'll consider it. If it says I have a discretion, I will set no supersedeas. I'll refuse to set because of the fact that this was done to this student here in his Senior

year. And I consider that the damage to him already is substantial.

MR. LUNA: Your Honor, I just, as you know, just gotten into this case.

THE COURT: This prejudicial action by this responsible body to me has done this young man substantial damage already.

MR. LUNA: I'll bring some authorities down this afternoon. And I believe I will bring authorities down that will indicate that the Court does not have discretion in a permanent injunction.

THE COURT: But it must be that I do not have any

Supreme Court, U.S.
FILED
MAY 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

86 1873

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX II

DISTRICT 9AAAAA EXECUTIVE COMMITTEE MEETING("TR");
POTEET STATEMENT OF FACTS ("PSF");
UIL CONSTITUTION AND CONTEST RULES
(Section 118 and Rule 409)

DISTRICT 9AAAAA
EXECUTIVE COMMITTEE MEETING
August 9, 1985

"TR"

Q You did a little investigation of this yourself, didn't you?

A Yes, sir. And our Athletic Director did too.

Q Who did you talk to?

A Well, I just talked with him and to anybody that I knew. Some of the other coaches. Let me say this: When Greg was going to make a change, Mrs. Jones came to me first, and she explained that they both had jobs in Dallas; they had a son in dental school, and that they felt like it was best to move.

And I talked to the coach at Highland Park, Coach Beavers, and I was certain that they had done nothing to try to recruit Greg -- I mean, in my mind, I felt there was nothing.

Q Did Mrs. --

THE REPORTER: I felt that what?

THE WITNESS: Later -- I felt there was no indication of any recruiting at all.

Of course, Coach Beavers is a good friend of mine, and the first team that we lined up to play this fall will be Highladn Park, and there is no way in the world that I was going to let Greg go over there if I could keep him from it, to be real honest, because they have got enough over there

that we have to fight without Greg Jones being over there; but I didn't think I could be unfair to Greg Jones, and that is why I signed this release.

Like I said, later -- oh, two or three days later, Mr. Jones came in, and he sat down in my office, and we talked a good while, and it was just like he said: Greg was in my chemistry class, Greg is a good student, Greg is -- he is one of the finest young men that we have at MacArthur High School morally and in every other way.

He was one that we wanted to keep in our program and I would have loved to have had him.

In my mind, like I said, I don't

think that they -- they didn't move for Greg to participate there. I think that had he been assured that he was going to be the starter at MacArthur last year, they would gone through an awful lot of hardship to keep him there, and that is why I signed the release and I couldn't -- I couldn't do it any other way unless there was a lot of other evidence.

Q (By Mr. Nolan) Now, the point I want to get across is: You did some investigating? You talked to Mr. and Mrs. Jones.

A Both of them.

Q Okay. And did you talk to anybody else?

A To some of the coaches that had been in the system, you know, the junior high coaches, and others, I just -- I just visited with them more in the terms to try to get the things to come out.

I just told that Greg was leaving, and was going there, and they expressed the same feeling that I had. They hated to see Greg leave, but no one indicated that there was anything wrong, of any problem.

Q Did Highladn Park have a good football team last year?

A Highland Park went to the semi-

finals last year; had an excellent football team.

Q Was their quarterback a senior?

A Yes sir.

Q Is he playing at SMU

A He was going to play --

Q Assuming SMU is going to play.

A -- in the high school all star game.

MR. NOLAN: I think that's all the questions I have.

in doing things, are going to make this a better place for us to live in. Those are the -- our athletes and people like this are going to be more the type people that are going to be the leaders of this world.

And we just had an opportunity to work with an awful good group of young people.

A Coach, are you aware of a single situation where you approved one of those forms in the past of any athlete in any sport where it has been rejected?

A No, sir.

MR. BOYD: I think that's all I have.

MR. JOHN CAMPBELL: John Campbell. Initially, the senior eligibility rule was for the youngsters where there were

hardships.

THE WITNESS: Yes, sir.

MR. JOHN CAMPBELL: Where the home had to change its residence.

THE WITNESS: Yes.

MR. JOHN CAMPBELL: Usually, that would be from one locale in the state to another state, or to another locale far removed from where they were living at.

THE WITNESS: During the junior year where they were playing.

MR. JOHN CAMPBELL: There is a question in some people's mind if a youngster is just changing a residence across town in the Metroplex area, if the move was absolutely essential.

Did this cross your mind, Coach, when a youngster was just moving, we'll say 12 miles -- 10 miles from his --

THE WITNESS: Well, to be real honest, It didn't, in the fact that both Mr. Jones and Mrs. Jones had explained the fact that they had to have three different cars going three difference directions each day.

I'm aware -- I -- of course, I started out when you had to lay out

a year when you moved, and so many of these rules have been brought in because of the parents, like a preacher, or a fellow who works for a big business, and they transfer him, and he has no choice over what he is going to do; and these were why the rules, as I understand it, were put in, and I -- I guess my main concern, when I think about them, is the fact that is a school is trying to recruit sthletes, and -- like I said, in the first

place, I didn't think that Frank, being a good friend of mine, would do that.

And I would like to say this: That the minute Greg checked into Highland Park, I had a phone call that day from Frank Beavers. He wanted to know, now, -- he said, "Now, Ray, is everything all right?" He said, "If it is not, if there's anything that has occurred that is bad," says, "we will not permit him to play."

This is what Frank told me that day and so I, because of our friendship, and because of what he said, I didn't think there was any recruiting. Now, the rest of it, Mr. Jones --

THE REPORTER: You didn't think what?

THE WITNESS: I didn't think there was any recruiting. I didn't think there was anything in the recruiting, and I think Mr. Jones has explained how he felt about the move, and this is what he told me, and his wife told me that two separate times.

MR. JOHN CAMPBELL: You said that Greg is a real fine athlete. He looks like one.

Is there any question in your mind that

he would be able to be a participating member of the Highland Park Scots?

THE WITNESS: No, sir, there is no questions in my mind. I'm not coaching there, but if I were, he would be a part of it.

MR. PRICE: Bob Price.

THE WITNESS: Yes, sir.

MR. PRICE: I am not real clear on at what point -- there was a time

(counseled)
that you cancelled (sic) as a HeadCoach at Irving MacArthur High School with Greg or his parents about his future for this coming football season?

THE WITNESS: No, sir.

MR. PRICE: No one asked you did he ever have a chance to play -- was he going to play?

THE WITNESS: No, sir. The only -- I guess I talked with the Joneses a lot more before Greg started football than I did after that.

The only time that I talked to either one of them about Greg's playing was when we had our first

inter-sch -- interschool scrimmage,
she asked, "Do you give the

Overton mentioned that as well, to participate in something, it helps.

MR. JONES: Right.

MS. DRAKE: It makes the student more well rounded, and especially with it being Greg's senior year. Are you not concerned about the fact that there is a possibility that he could be limited to what he could participate in?

MR. JONES: Yes, ma'am. That was one of the considerations also. You know, we did not know what was ahead in Highland Park. We had to make our decision based on what we felt was good for the whole family, considering all of the factors that we felt pertinent.

MR. WHITE: I have two

questions. Charlie White, South. Number one, you had no contact with anybody from Highland Park, either coaches or patrons. Did you have any contact with the patrons from Highland Park concerning your move over there?

MR. JONES: No, sir. I know a person in Highland Park and about -- after we had decided, I called him maybe a week before

we move, and I said -- he had moved to Highland Park three or four years ago. He had children in school. I said, "Given the opportunity to come over to Highland Park, what is your opinion of doing such a thing?" And he said, "If you can come over, we've got a good school system." And he said, "Fine kids. We've got our problems like every other school system, but it's a good place to live, good atmosphere, and they are achievers here, and the academics are among the best you can find."

And with Greg's academic record, we were concerned about it, and that is not to say other schools don't have good academics, but MacArthur is good, and Highland Park has a

good reputation academically and that I considered also.

Now, I didn't go around, you know: Hey, he's going to be quarterback; hey, you know, -- our contract with Highland Park prior to the move was that meeting, and that was it; no coaches, or no contact. I have not -- that is the only person that I had contacted in Highland Park other than, of

A. Yes, sir.

Q And during that phone conversation, I believe he asked you if there was any quarterback controversy, for lack of a better term, surrounding Greg Jones. And would you simply relate to the Committee what you related to Charlie Qualls about whether there was any quarterback controversy surrounding Greg Jones?

A Well, I don't know whether you would call it controversy. You could call it competition. We had Greg, and Sean Hall, our two junior quarterbacks, and they had been competing against each other since they were in junionr high school, what I'm told. Now, this is hearsay on my part because I just moved there after Greg was in high school, and so they had been competing against each other for a long time.

And I think they have had real tough battles with each other, but the two young men, they get along fine. They have had no problems except that, I'm sure, each one, I would be disappointed in each one of them if they didn't think they were the best; and I doubt -- it was going to make it an awfully hard job for me to choose between them.

Q The -- I just have one more question. In their junior year when they played, who played more at quarterback?

A Sean may have gotten more -- a little more playing time. I don't think that this was a result of ability as much as, like I said, his situation. If we wanted to run, well, we got Sean. If we wanted to throw, we went right quick to Greg. And I think they had different talents, and both were real good students, both were real intelligent young men, and both were winner-type athletes, and that is about all I can tell you.

Q That is all I wanted to know.

MR. JOHN CAMPBELL: John Campbell here. Coach, when you have youngsters competing for starting positions, usually you have one of them that will develop just a little bit more leadership, maybe has a little more backing of the ball club as a whole. Was there any contro-

versy among your players as to who was the best player, or did they just rally around both quarterbacks when they were on the field equally?

THE WITNESS: We had absolutely no problem. All three of the quarterbacks we had were extremely popular with the rest of the team, and the thing about it, they were all three super young people, and they were

POTEET STATEMENT OF FACTS

"PSF"

instance of your attorney not at the request of the Jones family, correct?

A. That's correct.

Q. At this time I'll show you Exhibit Number 5 and -- which is dated August 5th, 1985 on your letterhead and ask you to tell us what that is, sir.

A. Yes. After agreeing that there would be a hearing held with an impartial committee, then I telephoned eachschool informing them of this and told them that they needed to make a selection in such. And my conversation, this was a follow-up letter is to be sure that they had the correct dates and everything when the hearing would be held.

Q. All right sir. And in connection with what you have described as an impartial hearing, the work "impartial" is central to

these kinds of hearing on eligibility, isn't it?

A. Yes, sir, that's true.

Q. And would you agree that if the hearing is not impartial, that someone has not received whatever standards of fairness they're entitled at that hearing?

A. Yes, sir.

Q. Yeah. At this time I will show you Exhibit Number 6

committee made up of superintendents information on these things, right.

Q. Now, the kind of checking you're talking about though is between for instance if you're chairman between Coach Qualls and the schools that are involved, just calling the schools that are involved on the PAP form? Isn't that what you're talking about?

A. Yes, sir, and any other. In other words, they could get any other information. We ask them them to assemble all of the information that they could for us, you know.

Q. Does that include calling up the other schools and talking with them about the facts they have supposedly learned?

A. Oh, yes. And I can even recall them getting letters from parents on previous requests for transfers to document something to have further information. So it's a pro-

cedure they use. It's been used for years and years, the same way every year.

Q. And in fact those parents though that send letters don't vote at the meeting, do they?

A. No, sir.

Q. Okay. What I'm talking about is your representation communicating back and forth with the members that are going to sit at the meeting to vote yes or no on a child's eligibility. Are you telling this Court today that it's common practice for

Q. In making a determination as to whether or not a student should be allowed, a transfer student should be allowed to participate in extracurricular events, whatever that event might be, is it fair to state that you consider that an important, a very important decision given the importance of the training that students receive in extracurricular activities?

A. Yes, sir, it's important.

Q. Have you been aware of Coach Johnson's statement that in over 37 years he cannot recall when the sending and receiving schools approve a transfer student that it was rejected?

A. No, sir, I do not know, but I know 27 of those 37 we didn't even have to act on such a thing, so that would have been discounted, but we didn't even have to act on

transfer probably it's just been the last 10 years or less that we've had to be concerned with transfers. Prior to that there was no such things as transfers. So, 27 of the 37 years he wouldn't have been acting on them; wouldn't have been any occasion to.

Q. Why would he, if you know, why would he have told us that in 37 years he had never seen this occur?

A. I don't know, I cannot speak for him

Q. So, your testimony to the Court is generally that these previous athletic participation forms or PAP forms for short have really been in use about the last ten years, is that correct?

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A. I cannot recall the exact number of years, but it's been in recent times. When you talk about my career like of 38 years, it's been very recent times. AS he stated, his 37 years, it's been very recent that we're talking about.

Q. Now, in connection with providing students the ability, transfer students the ability to participate in extracurricular activities, isn't it fair to state that of the hundreds that you considered over the past ten years in district 9 AAAAA that Greg Jones is probably the only one you can remember having to be challenged with putting on an evidentiary hearing when both the sending and receiving schools have approved the transfer?

A. Yes, sir, that's correct.

Q. And out of the hundreds and hundreds

of transfer students which have been approved, isn't it fair to state that generally those requests are approved as a matter of routine?

A. Well, not of routine. Each one is presented individually and information is given on each one individually as it's presented.

Q. Okay. But generally those things are approved without a lot of discussion, haven't they?

A. In some cases, but some cases there have been discussions. There are some cases we've delayed on approving till additional information is acquired, right.

Q. Now, in fact, as far as sending and receiving schools

approving a transfer student's eligibility, other than Greg Jones in district 9 AAAAA, you can't really think of another individual in this district that's been denied eligibility with both sending and receiving schools approving it, have you? Can you?

A. That's correct.

Q. At the time of Greg Jones' initial consideration in March you were aware that he was wanting to play football in the fall for Highland Park, were you not, the fall of this year?

A. Yes, sir.

Q. And you were aware that he had apparently been a quarterback at his previous school, correct?

A. Yes, sir.

Q. Before going into the meeting in March of 1985 and other than knowing that he

had been a quarterback and that he wanted to try out for the Highland Park football team, did you have any knowledge, I mean had anybody given you any facts about the extent of this participation at Irving McArthur or his success rate at Irving McArthur, did you have any of that information?

A. Not any of the details, no, sir.

Q. What kind of generalities did you at that time believe would characterize his performance as a quarterback at Irving McArthur before you went into the March 20 meeting the same day?

A. I do not know.

Committee, did you take one minute to pick up the telephone and call the Joneses and tell them that there was some concern about their application, and if they wanted to be at the meeting where a vote was going to be taken, that they would have the right to be there? Did you do that?

A. No, sir, I had no idea how the other members would feel whether there was any concern or not. It would have been just my personal feeling I felt that would be the committee's decision.

Q. The answer is then you didn't take 60 seconds and dial the telephone number and tell the Joneses there to be at the meeting?

A. Did not take the time to call anybody?

Q. In fact, the date of the meeting March 20th, whatever it was, 1985, no one at that Executive Committee meeting, no one had

ever talked with the Joneses or their child, isn't that correct, as far as you know?

A. To my knowledge, right.

Q. That might have been a pretty good source of information, don't you think in this kind of hearing?

A. This was a district meeting. This was not a hearing, this was a district meeting.

MR. NOLAN: Excuse me, your Honor, is there -- I thought we were going to discuss this second hearing as to what was presented and what the procedure were and I would like to

Q. Okay. And generally when you conduct your meetings you try to conduct them in accordance with the Constitution and Contest Rules of the UIL, is that correct?

A. They're very informal in nature.

Q. But you try to abide by those rules, don't you?

A. We try to be fair in every case.

Q. And in your deposition we went over subchapter "h" of the contest or the Constitution and Contest Rules and didn't you tell me that you try to follow those?

A. Yes, sir I believe in due process when it can be -- yes, sir. This was not a hearing, it was a district meeting.

MR. BOYD: Object to non-responsive, your Honor, the last part.

THE COURT: Sustain your objection.

Let me ask Dr. Poteet. Was it con-

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vened for the purpose of making a decision in regards to a transfer eligibility question, that particular meeting of March 20th?

THE WITNESS: Yes, sir, it was for the purpose to review that request and it had been made at Highland Park's request, yes

THE COURT: And one of the operations would be -- didn't have to be, but could be to render a decision?

THE WITNESS: Could be, yes, sir, it was not necessary. We recognized it was six months away from football season, so, you know, the committee could have chosen to

CROSS OF DR. POTEET - BY MR. BOYD

Q. And you were award that there might have been some irregularities at that first meeting, weren't you?

A. No, sir, I was not aware that there were any. That was a regular district meeting there was no hearing. We were just offering a full hearing if that was what was desired.

Q. The first District Executive Committee meeting was to vote whether or not to approve the transfer request of Greg Jones, true or false.?

A. To consider.

Q. And there was a vote, correct?

A. There was a vote. But the vote did not have to be taken, it was to be considered.

Q. Right. The vote was taken, correct?

A. Yes, sir.

Q. And if he had been approved he would have been able to try out and participate, do all of the other things the other kids do, correct?

A. Yes, sir.

Q. So it was final in that regard, yes, if it had been approved it would have been final?

A. Yes, sir, it would have.

Q. So you considered at that time at that March 20th meeting a final vote. You decided to have one?

A. The committee did.

Q. Yes, sir. Now, for the Court's benefit, please tell

Judge Whittington if in advance of the meeting on March 20, 1985 you sent out any written notice to the Jones family that on March 20 the request of their son to participate, not necessarily make the team just try out for the team would be considered?

A. No, sir, nothing was sent out.

Q. In fact, you didn't even telephone the family and tell them that their -- give them any notice that their son's transfer request was going to be considered on March 20 and they were invited if they wanted to be there, you didn't do that, did you?

A. No, sir.

Q. And yesterday I asked you if when you knew there were going to be questions raised if you picked up the telephone and took 60 seconds of your time to call the Jones family and ask them to be there and you

said no. You remember that?

A. That's correct, sir.

Q. And at the meeting when you knew there was discussion that was unfavorable to the Jones family, did you think about taking a 30-second break to call the Jones family and say: Mr. Jones, we would sure like for you to come down here. WE didn't tell you we were going to conduct this meeting, but we're in it now and if you would like to present some or answer some questions, we'd appreciate it. Did you do that?

A. No, sir.

Q. That wouldn't have been unreasonable, would it?

A. Sir, it was discussed that he had -- there were six months before football season started and felt that if there was any appeal or anybody wanted to, that there would be sufficient time to do so.

MR. BOYD: Object your Honor, non-responsive to the last portion.

THE COURT: Sustain your objection, the last remarks would be disregarded. Repeat your question.

MR. BOYD: Thank you, your Honor.

Q. Dr Poteet, at the time that you were hearing unfavorable comments, in fact you were even making some.

MR. NOLAN: Your Honor, excuse me. In response to his objection, he asked:

Do you think it was reasonable? He explained to him why it was not reasonable. And the reason was that we have the time to do it at a later time.

MR. BOYD: Whether or not it was unreasonable. That's all I asked.

MR. NOLAN: Yeah, and he explained why. He said no and he explained.

THE COURT: I said repeat the question is what I have said. We will see what it is. He can repeat his answer again, if that's going to be the answer.

MR. NOLAN: Okay.

Q. Dr. Poteet, will you please tell us at the time of the

March 20, 1985 consideration by the District Executive Committee, Greg Jones' eligibility request, and during that meeting when unfavorable comments started coming forward, some from you, do you feel that it would have been unreasonable at that time to have picked up the telephone and call the Jones family and ask them to come down to answer some questions? Do you?

A. It was never expressed that it was necessary for us to do that.

Q. Okay. Do you think it would have been unreasonable to do that?

A. Didn't anybody feel it was necessary to do it at the time.

THE COURT: All right. It is your answer that no one thought it would be reasonable to do that?

THE WITNESS: Didn't anybody

feel, your Honor, that it would be reasonable. Again my answer was in the discussion it was discussed that he had -- there was six months before football season and that if there was an appeal or a hearing we had sufficient time to conduct that. And that --

THE COURT: I know, but you were at the process of making a decision and you were not availing yourself of full information, were you not, at that time?

THE WITNESS: That's correct.

THE COURT: Continue.

decision?

THE WITNESS: I think, your Honor, that, you know, in these situations, we've never had a parent to this day when we've taken any action, you know. Now, later on, whenever somebody did appeal to us then we've had other evidence and such. When we get out of the realm of just transfer, we've acted on eligibility, ineligible players, et cetera, but we have never had anybody present except those that just presented the information to us and then we took our action according to that.

THE COURT: But when you take am action, do you recognize that that creates an event? Do you recognize that?

THE WITNESS: Yes, sir, I do.

THE COURT: And then that an appeal from that event may be entirely dif-

ferent than the original event?

THE WITNESS: Yes, sir.

THE COURT: In other words, there may be different standards apply to the decision at the event and then a different standard applied upon the appeal. Do you recognize that?

THE WITNESS: I recognize there could be, yes, sir.

THE COURT: So therefore at the time of making a decision, do you think it is reasonable to get full information when you make the original decision?

THE WITNESS: Well, yes, sir, it's difficult to

explain, you know, at a district meeting where everything is very informal but I understand, sir. Yes, sir.

THE COURT: But there are steps in processes?

THE WITNESS: I understand that, yes, sir.

THE COURT: All right, continue, please.

Q. Dr. Poteet, yesterday I asked you if you had checked out Coach Qualls' report of what Coach Overton had allegedly told him, the report that he gave during the March 20 meeting. Do you recall that?

A. Yes, sir.

Q. Okay, you recall the report? And then I asked you yesterday if you had personally verified any of the things that Coach Qualls had said at that meeting about Coach

Overton and you said you had not, do you recall that?

A. That's correct, sir.

Q. And so far as you know no one ever verified any of the things that Coach Qualls said at that meeting, the March 20 meeting about Coach Overton's statements?

A. That's correct, sir.

Q. Do you recall Coach Qualls telling the committee that Coach Overton said there had been a strained relationship and bad blood between the Jones family and the coach over playing time of Greg Jones? Do you recall Coach Qualls saying that?

A. I'm not sure those are the exact words that I recall, but that was the theme of it, yes, sir.

Q. They weren't getting along because supposedly tge Greg Jones boy was not getting enough time to play.

A. I don't know that he said they weren't getting along. That there was some conflict, right.

Q. Conflict. How about bad blood, do you recall those words being used?

A. I'm sorry, I do not recall the terms.

Q. And you heard Coach Overton's statement under oath yesterday when it was read that he's always gotten along fine with the boy and his family, didn't you? Did you hear that?

A. Yes, sir.

Q. And that the boy was an honor student and a respected young man at Irving McArthur and everyone in general, did you

hear that?

A. Yes, sir. But Mr. Qualls' repor was not conflict with the coach. It wa conflict of playing.

Q. And you also heard his statemen that he had never talked with the Jone family, and it's in the record, about playin time of Greg Jones. Don't you remember that

A. Correct, yes, sir.

Q. Now, if he had never talked with th family and he liked the boy and the boy wa in his chemistry class and was a respecte young man throughout the High School, wher is the conflict, Dr. Poteet? The rea conflict, if anything?

A. In the playing of quarterback an competition with

Q. No special controversy of two kids of approximately the same skill that are competing for the same position, that's not unusual, is it?

A. No, sir.

Q. When is the last time you recall the District Executive Committee considering transfer eligibility requests, Dr. Poteet?

A. When is the last time I called a district committee?

Q. Any District Executive Committee at which you attended or your representative attended that considered transfer eligibility requests?

A. The last meeting we had was on September 1, 1985.

Q. Between the August 9 hearing before the ad hoc committee and the September 1 meeting were there any other meetings at

which transfer requests were considered?

A. No, sir.

Q. Okay. Is the September 1 meeti the one at which Dr. Power was nominated a elected as the new chairman?

A. Yes, sir.

Q. And at the September 1 meeting you recall there being about 16 requests? or 16 requests?

A. There were several. I would n want to testify as to whether it was -- b it was 10 or 12. 15, right.

Q. And previously except for Gr Jones, a properly completed PAP form h been sufficient to generate approval from

the committee on transfer requests, correct?

A. No, sir, that's not correct.

Q. Previously to this September meeting other than Greg Jones, you're not aware of any other transfer requests in the last ten years since the PAP form has been used where the sending and receiving schools have approved the transfer that the kid has been rejected, correct?

A. That's correct.

Q. Okay. Now, on September 1 you approved some completed PAP forms, didn't you?

A. Yes, sir.

Q. And you approved conditionally some incomplete PAP forms, didn't you?

A. Yes, sir, that's our normal procedure.

Q. And you didn't know whether the

other school was approved or not, you don
know any of the circumstances, but as long
they had it filled in, this committee wa
going to approve those applications, correct

A. No, sir, that is subject to tha
being completed and the information submitte
to us. That saves us from having to cal
another meeting.

Q. Right.

A. That part is done by phone.

Q. You're saying that would have bee
another meeting on these conditional appro
vals after they were filled

in, the committee would then again meet by telephone to determine whether or not they were going to approve them?

A. The district chairman does. We approve then tentative to the paper work being completed, all of the information is given, that's been our normal procedure and that was the same procedure used at this time by the chairman. He didn't have to use that procedure but he choose to do so.

Q. So the procedure being incomplete PAP form and you approve it conditionally?

A. Conditionally, that's correct.

Q. Conditioned on it being filled out?

A. On it being completed and then the information being submitted.

Q. It's then your testimony that each time the chairman receives one of these filled out completed PAP form he calls around

to all of the different representatives to find out if they approve it?

A. Just three calls is all that's necessary. That's the reason we handle it that way.

Q. But there's no evidence taken, no discussion taken in a full executive, is there?

A. The discussion is that at the meeting paper work is not complete. It's conditional to that paper work then that person, the chairman makes the call, submits the additional information right.

Q. But at the committee meeting you've got superintendents or their representatives, you usually have athletic directors, you even have principals often, isn't that correct?

A. Yes, sir.

Q. All of these people are not checked with when you conditional approve a PAP form and then it's filled in later?

A. That student is already at that school. It's just that maybe the sending school has not completed the paper work, but the student is discussed at that time and every thing.

Q. Discussed as -- particularily as to the one that's filled in the paper work, correct?

A. Yes, sir, and also those that are on condition, they were discussed at that time, right.

Q. But you don't know whether they'
going to be approved or not, correct?

A. That's correct, that's when t
chairman makes the call, gives the addition
information.

Q. And that's just a little procedu
you use to make it a little bit easier so y
don't have to get back and meet one the P
form is completed, correct?

A. Yes, sir.

Q. So there's not discussion among t
committee any more, once it's conditional
approved there's no more general committ
discussion??

A. Not as a committee, but on the phone, right.

Q. So, Greg Jones has been denied eligibility with a completed PAP form and others have even been conditionally approved without having it totally filled out, correct?

A. They're never eligible until it is completed and final vote is taken so it may be three weeks in the football season and they don't play those games, so they're still not eligible.

Q. Until they fill it out and get it in, right?

A. Yes, sir, and the vote is taken.

Q. Without an executive committee meeting, correct?

A. Yes, sir.

Q. Coach Qualls reports to you on each of those applications before that meeting?

A. Yes, sir, and to the entire committee.

Q. Okay.

A. As well as the information from the other people present?

Q. Did you understand my question?

A. Yes.

Q. Did Coach Qualls report to you on each of those applications before the meeting?

A. No, sir not proper. Sometimes he does and sometimes he doesn't, right. If he finds there needs to be additional information then he might do so.

Q. At the meeting since he didn't this time on September

1st report to you about each application at the meeting did Coach Qualls make statements on each application?

A. No, sir, I had not received any applications prior to the meeting itself. They were all submitted at the meeting.

Q. So there was no opportunity to even investigate.

A. It was done by the chairman, this chairman did that. I had nothing to do with that.

Q. But there was no investigation of any of them?

A. I had nothing to do with that.

Q. Is that correct, no investigation?

A. The investigation was done by the principals present, the head coaches present, and the athletic directors were all present and they each submit and give their infor-

mation.

Q. But the other schools had not had an opportunity to even know which ones were being presented, correct?

A. Oh that's common, that's correct, right.

Q. Okay. So Coach Qualls hadn't investigated the various applications because he didn't know who was going to be presented, correct?

A. In this case, that's correct, right.

Q. So he doesn't investigate in every case then, does he?

A. Not in every case, that's correct, because you see, there's nothing that says you have to submit them prior to the meeting so they can be submitted at the time of the meeting.

Q. Okay. So that the Court has some idea of how the

executive committee meetings are generally conducted, doesn't the chairman kind of rule and guide what's going on?

A. No, not necessarily in this case, these are all professional people and it was very informal.

Q. You take a leadership role at the meetings that we're taking about now, we would like to have discussion on this child if anybody has any discussion. Is that the extent of it?

A. Yes, we have an agenda and we more or less follow that agenda. There's one item on that agenda: Consider all transfer requests. Usually the principals come forward and present their particular transfer and so forth.

Q. And for the Court, the manner in which you considered the applications that

were submitted just at the meeting on September 1st, that's not unusual. Isn't that correct?

A. That's correct, yes, sir.

Q. So sometimes Coach Qualls has a chance to investigate, sometimes he doesn't, correct?

A. Yes, sir, that's correct.

Q. So it would be stretching things a little bit too far to say that he investigates every application?

A. That's correct because see he wouldn't be investigating these, they were going to be presented at the meeting themselves so the principals and all were present to make their presentations.

Q. All right. Dr. Poteet, would you for the Court

Q. So the witness has an opportunity, Dr. Poteet, that's not in your minutes for that day, are they, the fact that you say you were charged with contacting anybody?

A. That's correct, sir.

Q. Okay. Now, after the meeting when a 7 - 0 vote has been taken did you think it would have been appropriate at that time or do you think it would have been out or the way for you to call Mr. Jones and say: Mr. Jones, the committee has made a decision. Would you like to come give some statements? Maybe we'll change our mind. We've made our mind up. Maybe we'll change it.

Did you take the time to do that?

A. No, sir, I felt that would be done by Highland Park School District.

Q. So the answer is you didn't do it as chairman?

A. That's correct I did not as chairman.

THE COURT: Let's take a 15-minute recess.

(Whereupon a recess was had.)

THE COURT: Let us resume, Ladies and Gentlemen. Will you resume.

MR. BOYD: May it please the Court.

Q. Dr. Poteet, isn't it true that you feel that before the child's eligibility on a transfer request is denied that the parents ought to have a chance to make input? Don't you feel that's true?

participate, correct?

A. That's correct.

Q. Dr. Poteet, do you as a professional educator regard it as important to a child's health where possible where physical mental and moral development that he have as much opportunity as possible to be a part of his family, to participate in familial meals, visiting with family members, and other such family contact, is that an important part of a child's moral and physical mental educational development?

A. Yes, sir.

Q. In fact, the home situation often times is extremely important to the child's development in his educational situation and environment, correct?

A. Yes, sir.

Q. So the better the home environment

is, generally speaking the child should be expected to have a little easier time in school, isn't that correct?

A. Yes, sir.

Q. So it would be fair to state that you are for whatever processes encourgage the family staying together and having more time together?

A. Yes, sir.

Q. Is it fair to state that you don't believe spending excessive amounts of time on freeways here is quality family time?

A. I'm not sure I could address that.

Q. You don't think it's quality family time, do you?

A. I don't guess it would be, no.

Q. It wouldn't be near as nice as sitting down at a dinner table with your parents, brothers and sisters present, would it?

A. Right.

Q. And as a professional educator, don't you think it's important that parents take time to give guidance, visit and be close to their children, even from the educational perspective?

A. Yes, sir.

Q. So it's necessary for proper development as you see it that a child have some time to visit and be with the parents and the other children in the family, correct?

A. Yes.

Q. Would it be fair to state that you think that the family unit is really at the core not only in education but from your professional perspective of our whole society?

A. Yes, sir.

Q. And any interference with the family unity itself should really be manifested by real important concerns like was for instance, you know, war, you might have to draft a member of the family to send them overseas, it should be something important, shouldn't it?

A. Yes, sir.

CROSS OF DR. POTEET - BY MR. BOYD

Q, Do you have any reason to believ that if Greg Jones was eligible for participation in athletics at Highland Park on the one hand and if he could also participate at Irving McArthur on the other hand, do you have any reason to believe that he went to school in Irving McArthur that he would have more family time than he would if he could just drive down the street to Highland Park to his school?

A. I'm sorry I could not address that.

Q. Don't you feel like he could either go from Irving McArthur to where the family lives now or to Highland Park and participate in UIL if he went to school in his own neighborhood. He would be more likely to have more family time, more family exposure and experience than he would if he had to drive a long distance?

A. You would assume that, yes.

Q. You're not against neighborhood schools, are you?

A. No, sir.

Q. There are reasons why some people think those are advantageous, correct?

A. Yes, sir.

Q. Are you one of those people?

A. Yes, sir.

Q. Have you ever been made aware of the church affiliations or the close family ties that exist in the Jones family?

A. No, sir.

Q. If those ties are indeed close you wouldn't want to do anything yourself to interfere with those, would you?

A. Not intentionally.

Q. Dr. Poteet, yesterday the Court read to you subchapter "h" of the Constitution and Contest Rules which you said you try to abide by when you can and I will represent to you, as an officer of the Court that section 106 refers to findings to be based exclusively on evidence. Do you believe that you try to comply with that?

A. That portion, yes.

Q. And section 119 says that the vote should be by impartial members of the executive committee. Do you believe impartial is important?

A. Yes, sir.

Q. A vote by a committee of people that weren't impartial would not be a true valid vote, would it?

A. Right.

THE COURT: Continue, please.

Q. Thank you, your Honor. Section 123 of subchapter "h" discourages ex parte consultations and we talked about the school representative talking about the merits of the case before the meeting actually is commenced and you agreed that you try to abide, should try to abide by ex parte consultations being discouraged, correct?

Q. And what evidence goes one way or the other? I mean can you tell what evidence you used to prove that a move was not for athletic purposes if you're a family.

A. Oh, yes, we approved a lot of transfers, one from Tallahassee, Florida. Very obviously they didn't move for athletic. One is from Mt. Vernon, Texas but then whenever they move from Irving to Highland Park or from Richardson to Garland or from Garland to Mesquite then we take a real close look.

Q. And in this September 1 meeting you had children that transferred within the district, didn't you?

A. Within the district?

Q Yes, sir.

A. Yes, sir.

Q. Yeah. And it didn't cause any kind of ruckus and you didn't have an evidentiary

hearing, did you?

A. No, sir.

Q. Wasn't necessary, was it?

A. No, sir.

Q. What I'm asking you is, what kind of evidence if a family moves from one district to another instead of what we just talked about moving within the district, from one district to another, what kind of evidence demonstrates the intention of the family's move?

A. Well, everything has to be weighed as to looking as to why they possibly did move. If there was a reason for that

move, when you consider a legitimate reason for that move. If there was any type of controversy surrounding that move and so forth.

Q. And those decisions should be made by impartial members on credible evidence, right?

A. Yes, sir.

Q. Not on hearsay.

A. Yes, sir.

Q. On credible evidence.

If a committee decides that a move either was for athletic purposes or not for any athletic purposes, is it fair to state there's no way to really attack that if they've had credible evidence because it's a weighing of all of the factors that just can't be tied down?

A. Try to weigh every thing.

Q. But it's almost impossible to attack one way or the other, isn't it because it's a weighing?

A. You have to weigh everything presented, yes.

Q. So it's important when there are no definite standards in your weighing everything, that credible evidence, correct?

A. Yes, sir.

Q. And it's important to make sure that you've looked out for the rights of the child in those instances, correct?

A. Yes, sir.

Q. Because it is for the children that the UIL has

existed, is that not correct?

A. Yes, sir.

Q. And all of these rules and the constitution and everything have been put together to try to make competition fair, equitable, and available to the children of this state?

A. Yes, sir.

Q. And there'a not a thing that the Constitution and Contest Rules call for that you take any exception with, is there?

A. I might take some personal exceptions to.

Q. But professional, but professionally you don't?

A. They're rules and we abide by them.

Q. Yes. In connection with the March 20, 1985 vote you've already testified, have you not, that there was no notice that went

out to the parents as far as you know?

A. That is correct.

Q. So under section 102 there was no written notice of the date, days, time, place and nature of the hearing to the parents. There was no written notice of the statement of the rules under which the hearing was being held. No statement of a reference to the particular section of the rules involved sent to the parents and there was not a short and plain statement of the matters asserted to the parents, was there?

A. No, sir.

CROSS OF DR. POTEET - BY MR. BOYD

Q. I didn't hear you, Doctor.

A. No, sir.

Q. Section 103 of subchapter "h" says that opportunity should be afforded for all parties to respond and present evidence, argument on all issues. On March 20, 1985 that opportunity wasn't extended, was it?

A. No, sir.

Q. Section 105 talks about a record of evidentiary hearing. And you did take evidence, did you not, at the March 20 hearing, let me ask that.

THE COURT: Hold your answer, please. Mr. Nolan.

MR. NOLAN: Your Honor, if it will save the time, we will stipulate that section 102, 103, 104, 105, 106, 107, 108, 109, 110, 11, 112, 113, 114, 115, that none of the elements of those things were followed

to any great extent.

THE COURT: 102 through ...

MR. NOLAN: Till the end of subchapter "h". That those were not followed to any great extent in this hearing. If they were not followed at all it was not because they were intending, it was simply because they happened. They talked to somebody at the meeting at March the 20th. We've never maintained anything to the contract.

MR. BOYD: Is counsel operating to stipulate through section 123 then on subchapter "h"? I will not take up any more time if they are.

A. No, sir, I'm not aware of that.

Q. Has anybody ever suggested to you, and this goes to anybody that you can identify that's not anonymous, that Greg Jones had a better football future at Highland Park than he did at Irving McArthur where he was a 50-50 shot for the starting position? Has anybody ever told you he had a better potential at Highland Park?

A. No, sir.

Q. Has anybody ever told you or suggested to you that he was going to improve his athletic career by going to Highland Park rather than staying at Irving McArthur?

A. Hasn't nobody told me that, no, sir.

Q. You talked a little earlier with your attorney about how important it is that you follow the rules and regulations, students and administrators, correct?

A. Yes, sir.

Q. So subchapter "h" was alive and well and you were trying to abide by it. Didn't you think the rules ought to be applied, don't you?

A. We really didn't try to abide by it.

Q. Didn't you tell me in your deposition that you tried to apply subchapter "h"?

A. No, sir, we did not try to apply subchapter "h". I was asked if I believed in it and I sad well I might have

meeting. We did not try really to apply it.

Q. When I asked you earlier in this trial if those Constitution and Contest Rules, if you tried to comply with these, do you recall telling me you did?

A. Well, if you specifically refer to those, that were in effect for that one portion of a year, no, we did not. Now, the other rules if you refer to, we tried to, but in no way did we attempt or even mention those particular rules that were in effect for only a short period of time. In fact, I doubt if anybody was even close to being that familiar with them.

Q. Do you recall in your deposition telling me that if the UIL recommended following subchapter "h" that you would try to do so?

A. Yes, right, I do recall. Right, we

were talking the whole context of that was about due process and giving a fair hearing and such, right. But, again, when our meeting was held, those subchapters, those rules were never mentioned, never discussed, and never applied for that specific meeting.

Q. You told me in your deposition, though, that it was recommended that it be followed, number one, and number two --

A. The book recommends it but we didn't, right.

Q. And you told me that you tried to, did you not?

A. Well, if I said I tried to, it was not in the context that we really took those rules and said this is what we're going to follow as far as a hearing, because we didn't, you

know.

Q. Dr. Poteet, do you recall telling me in your deposition that you tried to abide by the rules set forth by the Constitution and Contest Rules which included subchapter "h"?

A. Yes, sir, that's right, right.

Q. And you also said that due process in general you tried to provide people who are submitting applications for eligibilty, did you not?

A. Yes, sir, I did.

Q. That's a standard that you have utilized with the executive committee over time?

A. Yes.

Q. Did anybody at the March 20 or the April 9 district executive meeting --

THE COURT: August 9.

MR. BOYD: Thank you, your Honor.

Q. -- suggest to you in any way, do you remember any person speaking that even suggested that Greg Jones was improving his athletic potential by moving from Irving McArthur to Highland Park High School? Anybody?

A. Well, that was the whole discussion. That was the purpose for the vote. That the move was being made to improve his athletic -- that's what the vote stated.

MR. BOYD: Objection, your Honor, nonresponsive,

THE COURT: Overrule the objection.

RECROSS OF DR. POTEET - BY MR. BOYD

Q. And to make sure the record is clear, you said they would be called on after their decision to affirm that they had no previous information whatsoever in making their decision, is that correct?

A. Yes, sir, that's correct.

Q. Do you remember Mr. Nolan's questions about whether or not you were a lawyer?

A. Right.

Q. Do you remember that. And then he asked you about whether or not you understood what different technical terms were. Do you remember those questions?

A. Right.

Q. The C and CR, the Constitution and Contest Rules are not written for lawyers, are they, they're written for administrators, students, faculty, people in UIL, correct?

A. Yes, sir.

Q. Is there any kind of a condition that you need to be a lawyer to understand this book?

A. No, sir, even though it's rather complex, there are so many rules and regulations, both -- most of them are written where you can understand them.

Q. Before you start the school year, do you ever have to confirm that you read and understand the rules? Do you ever have to do that?

A. No, sir, we don't.

RECROSS OF DR. POTEET - BY MR. BOYD

Q. Is that part of your professional job to do that?

A. Yes, sir.

Q. So as an administrator, you're challenged with the duty of understanding the Constitution and Contest Rules, at least being familiar with them, correct?

A. Yes, sir.

Q. That's part of your job, isn't it?

A. Yes, sir.

Q. If you don't understand something you've got people down in Austin to call, don't you?

A. Yes, sir.

Q. So you wouldn't want the Court to think that you have been less than professional in implementing any of the procedures that are contained in that book, would you?

A. Well, right.

Q. Now, just so the Court is aware, you have approved the transfer of request of other students that have rented in a particular district, haven't you?

A. That have rented?

Q. Sure, the families rent the house.

A. I would suppose so.

Q. There are a lot of districts where people rent, aren't there, even more than own?

A. Yes, sir.

UIL

CONSTITUTION AND CONTEST RULES

Section 118
Rule 409

Section 118: STANDARD OF PROOF

The standard of proof in any contested or uncontested case is the preponderance of credible evidence.

Section 409: CHANGE OF RESIDENCE FOR ATHLETIC PURPOSES

(a) TIME RESTRICTION. A student who changes his school district or attendance zone for athletic purposes may not participate in a League contest until he has resided for at least one year in the district or attendance zone to which he moved. The district executive committee for the district into which he moved shall determine when he becomes eligible.

(b) RECRUITING. An individual is presumed to have changed his school district for athletic purposes if he was recruited.

(c) PARENT FORMS. An individual is presumed to have changed his school district for athletic purposes until his parents change their residence to a new district or attendance zone, the superintendent, principal and coach sign a statement that he was not recruited by the new school and that he did not change districts or attendance zones for athletic purposes, and the parents sign a sworn statement before a school administrator that they

reside in the new district or attendance zone and the that the change was not made for their child's athletic purposes.

(d) NEGATIVE PRESUMPTION. An individual is presumed not to have changed his school district for athletic purposes if:

(1) he did not represent his former school in a League athletic contest while he was in the ninth or higher grade,

(2) he changed school districts or attendance zones because the school district or attendance zone line was changed by the school board or other appropriate authority or,

(3) he transferred from a high school within a school district to the district's vocational high or a magnet school if he transferred during the first year that he had an opportunity to do so.

86 1873

Supreme Court, U.S.
FILED
MAY 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX III

STATEMENT OF FACTS ("S.F.")
(Pages 8 to 315)

STATEMENT OF FACTS

"SF"

with anyone you need.

Section 409: Change of residence for athletic purposes. (a) Time restriction. Student who changes his school district or attendance zone for athletic purposes may not participate in a league contest until he has resided for at least one year in the district, a district or attendance zone to which he moved. The District Executive Committee for the district into which he moves shall determine when he becomes eligible.

Subparagraph (b) Recruiting: An individual is presumed to have changed his school district for athletic purpose if he was recruited.

(c) Parent forms. An individual is presumed to have changed his school district for athletic purposes until his parent's change their residence to a new district or

attendance zone. The superintendent, principal and coach sign a statement that he was not recruited by the new school and that he did not change districts or attendance zones for athletic purposes and the parents sign a sworn statement before a school administrator that they reside in the new district or attendance zone and that the change was not made for their child's athletic purposes.

(d) Negative presumption: An individual is presumed not to have changed his school for athletic purposes if (1) he did not represent his former school in a league athletic contest while he was in the 9th or higher grades. (2) He changed school

district or attendance zones because the school district or attendance zone line was changed by the school board or other appropriate authority or (3) He transferred to a high school within a school district and the district vocational or magnet school if he transferred during the first year and that he had an opportunity to do so.

I'll ask the Plaintiff. Does that appear to be a correct reading of the applicable rule?

MR. BOYD: Yes, it does, your Honor.

THE COURT: I'll ask Mr. Nolan.

MR. NOLAN: Yes, your Honor.

THE COURT: Thank you, both. We know what rule we're dealing with at this moment.

Now, let me go back and look one

more --

Now, I noticed that Mr. Boyd filed on September 10th, 1985 a Plaintiff's First Amended Original Petition of 14 pages. I also note that the Defendant has presented to the Court and the Court has received for filing Defendant's First Amended Original Answer. Is there any question about the pleadings upon which the Court is going to conduct the hearing at this point? Is there any objection to Plaintiff's First Amended Original Petition or the Defendant's First Amended Original Answer?

MR. BOYD: Your Honor, I don't think that there is. Mr. Nolan and I have diligently labored to accomodate one another in that regard.

of my opening statement, so I don't need to get into that right now.

So those are the two major issues: Did they abide by what they were supposed to have done? Did they properly consider this under their standard procedures? And then Number 2: Was there an arbitrary or discriminatory application of the rule, even if it's valid?

THE COURT: So, here's the question I have before we get to your ten minute opening statement.

MR. BOYD: Yes, sir.

THE COURT: You said did they follow the standard

of procedures. All right, I would like to have those enunciated.

MR. BOYD: Yes, sir.

THE COURT: You've given me 409.

MR. BOYD: Yes, sir.

THE COURT: Now, where are the standard of procedures?

MR. BOYD: Subchapter "h" is a contested case, the various witnesses of the District Executive Committee said that they attempt to follow it, no reason they don't try to follow it, and that they use it in order to try to insure fairness to the students. Subchapter "h" sets forth, of this Constitution and Contest Rules.

THE COURT: Do you all have that?

MR. BOYD: You have a copy of that as well.

THE COURT: I may ask you to help me find it here.

MR. BOYD: That's all right.

THE COURT: Would you step up here and locate it for me?

MR. BOYD: Yes, sir.

THE COURT: Because I've got 409. The reason I'm asking you do this is to make it rapid. You are more familiar that I. If you find it, will you remove it so we can have it on top?

MR. BOYD: This came off an exhibit to the First Amended Original Petition and Application for Injunctive Relief.

May it please the Court, the other standard was more nebulous but during discovery it's developed and the various superintendents talked about providing due process in such matters as these affecting students or administrator faculty or whatever happened to be -- just general due process protections: notice, opportunity to be heard, and things like that.

The COURT: Let me ask you this. Standby, just let me take a look at this right now. This is the way to know. Find my way first as I go into it then I won't have to back out. I'm looking at Subchapter "h". Section 100 is general. Section 101 is

cases, contested cases. Section 102: Notice of evidentiary hearing. I'll ask Mr. Boyd, is that going to be an issue on notice?

Mr. BOYD: Yes, your Honor.

THE COURT: All right, that will be in issue then.

(A) Evidentiary hearing. In all contested cases, all parties, including applicants for waiver of eligibility rules and alleged violators of UIL rules must be afforded the opportunity for an evidentiary hearing by the appropriate UIL body after a reasonable written notice.

(B) Written notice. The notice shall include

(1) a statement of the date, days, time and place and

nature of the hearing;

(2) statement of the rules under which the hearing is being held;

(3) a reference to the particular sections of the rules involved, and

(4) a short and plain statement of the matters asserted including (a) in the case of an application for waiver of eligibility rules, the relief sought, or (b) in the case of alleged violations, that the alleged violator should show cause why he should not be found in violation. (c) level of detail of notice. If the UIL or other party is unable to state the matters in detail and the time notice is served. Initial notice maybe limited to a statement of the issues involved, there after on timely written application, a more definite and detailed statement shall be furnished prior to the

hearing.

Section 103. Evidence and argument. In all contested cases, opportunity shall be afforded for all parties to respond and present evidence and argument on all issues.

Section 104. Informal disposition. Informal disposition may be made of all uncontested cases by written stipulation of fact, written settlement, written waiver of hearing and written consent order.

Section 105. Record of evidentiary hearing. Record in a contested case includes:

(1) all pleadings, motions and intermediate rulings.

(2) evidence received or considered.

(3) a statement of matters officially noticed.

(4) questions and offers of proof, objections and rulings on them.

(5) proposed findings of fact and conclusions concerning applicability of rules.

(6) any decision, reasons or report by the hearing officer, and

(7) all UIL staff memoranda or data submitted to or considered by the hearing officer.

Tape recording transcription.

Proceedings or any part of them of the evidentiary hearing may be tape recorded or transcribed upon the order of the hearing officer who may require advance deposit of all sufficient funds to cover the costs and he shall assess the cost of the transcript to

the unsuccessful party in his proposal for decision.

Section 106. Pleadings of fact, reasons and conclusions. I'll skip the body.

Section 107. Hearing officer. Chairman, as the hearing officer, chairman of the body conducting the evidentary hearing or other designated UIL Officer shall be the hearing officer.

Notary public. The hearing officer shall be a notary public or shall have the contested case presented before a notary public.

OPENING STATEMENTS

Responsibilities. The hearing officer shall have the responsibilities one through ten.

(1) to file any request for evidentiary hearing.

(2) to determine parties and interested persons direct or contesting parties and interested persons to appear at a specified time and place for a prehearing conference for purposes set out in Section 107.

(4) rule on prehearing motions.

(5) conduct the hearing in accordance with UIL Constitution and Contest Rules.

(6) administer or have a notary public administer oaths to witnesses.

(7) examine witnesses.

(8) receive evidence.

(9) rule upon admissibility of evi-

dence.

(10) issue requests to persons to appear and testify.

(11) issue requests to persons to produce evidence at a specified time and place.

(12) rule on motions during hearing upon the advice of the UIL legal counsel.

(13) keep a complete of each evidentiary hearing.

(14) transmit the record including his written proposal for decision to include findings of fact, reasons and conclusions about the applications of UIL rules to the contested

case to the appropriate decision making body when completed.

(15) take such other actions upon the advice of the UIL legal counsel that are consistent with the UIL Constitution and Contest Rules in order to provide a fair, just and proper evidentiary hearing.

Section 108 prehearing conferences.

(a) considerations at the conference. They are enumerated one through seven.

(b) prehearing order of the hearing officer may prepare a written prehearing conference order.

Section 109. Rules of Procedure at hearing. Usual procedures: The hearing officer shall utilize procedures set out in the UIL Constitution and Contest Rules and special rules promulgated by the State Executive Committee in conducting the eviden-

tiary hearing.

Procedural guides and on usual cases the UIL Constitution and Contest Rules and special rules of the state executive committee do not address specifically, the hearing officer shall utilize the adminstrative procedures in Texas Register Act in the Texas Rules of Civil Procedure upon the advice of UIL legal counsel as to procedural guides.

Section 110. Admissible evidence.

(a) Limitations in contested cases. Any evidence offered by a party except irrelevant, immaterial or unduly repetitious evidence shall be received into evidence.

(b) Rules of Evidence inapplicable. The Rules of Evidence as applied in the courts of this state, any other state or in the federal rules shall not apply except that the UIL shall give effect to the rules of privilege recognized by law.

(c) Handling objections. Objections to evidentiary offers may be made and shall be noted in the record.

Written evidence subject to these requirements of the hearing will be expedited and the interested party will not be prejudiced substantially. Any part of the evidence may be received in written form.

Section 111. Sworn testimony.

Section 112. Cross-examination.

Section 113. Official notice.

(a) Judicially known facts.

(b) UIL expertise.

(c) official interpretations.

(d) Official staff opinions.

(e) Contested official notice.

Section 114. Legal counsel.

(a) In contested cases parties may be assisted by legal counsel.

(b) Counsel or the hearing officer. The hearing officer may obtain the advice of UIL legal counsel on matters of procedure, offers of evidence and objections.

Section 115. Parties and interested persons sworn

written request to become a party.

(b) Timely request.

(c) Contents of request.

(d) Admission of party.

(e) Request to become interested person.

(f) Timely request.

(g) Admission of interested persons.

(h) Rights of a party. I'll read that. A person admitted as a party to a contested case has a right to

(1) participate in prehearing conferences;

(2) present evidence at the hearing;

(3) cross examine witnesses at the hearing;

(4) make motions and receive rulings on objections at the hearing; and

(5) appeal the decision of a contested case as provided by law. Rights of an

interested person admitted as an interested person to a contested case has only the right to present evidence in the contested case.

116. Discovery. Good cause required unavailable unless good cause shown. Scope of discovery. Refers to the Texas Rules of Civil Procedure.

117. The burden or proving entitlement to the relief requested in any contested or uncontested case shall be upon the moving party.

WE will have to decide who was and who is the moving

party, of course, we get to it at any point. That's the burden of proof.

Decisions in cases, 119.

I skipped 118. Standard of proof. Standard of proof in any contested or uncontested case is a preponderance of credible evidence.

119. Decision in cases.

(a) consideration that a reasonably scheduled open meeting of the body that conducted the evidentiary hearing, the cases shall be decided by the vote of its impartial members upon the consideration of a record of the case in terms of decisions concerning proposed findings of fact, reasons and conclusions about the application of rules including cases.

(b) Deliberations. After determining any involvement of members pursuant to section 25

and the case of District Executive Committees, the body may retire to a room or exclude everyone from the room who is not a voting member of the body in order to deliberate upon the record of evidence before taking their vote in open meeting. No party or person involved in the case and no one other than the voting members of the body may be present during such deliberations.

(c) Decision. The decision upon the case must be a binding action in the form of a written order to accept, specifically modify, or reject a hearing officer's proposal for decisions with written findings of fact, reasons and conclusions about the

applications of the UIL rules and the case of rejection.

Section 120. Proposals for decision from a party. A party may submit a written proposal for decision for consideration.

Section 121. Motions for rconsideration at rehearing.

(a) Urging the motion. Any party may urge within a reasonable time after a decision in a contested case a motion for reconsideration or rehearing with a body having original jurisdiction or with a State Executive Committee on an appeal, denial, render decision final. The denial of a motion for reconsideration or rehearing finalizes the decision.

(c) Motion for reconsideration or rehearing is granted in whole or in part, previously rendered decision or orders is

vacated in its entirety.

(b) Time periods for motions for reconsideratino shall be by agreement between the hearing officer and the parties.

Section 122. Appeals to the State Executive Committee.

(a) Substantial evidence reviewed. The State Executive committee considers an appeal decision by applying a substantial evidence test to the findings of fact, reasons, conclusions upon the rules that are stated in the record to determine if the decision is reasonably supported there by.

(b) No new evidence.

(c) Considerations. In its consideration the State Executive Committee shall determine if the decision is purposefully based upon facts made evident at the hearing and made after due admission. If the State Executive Committee determines that the decision is beyond the jurisdiction of UIL and is arbitrary, not based upon substantial evidence or capricious, the committee shall reverse the decision and may remand the case for further consideration or render final decision.

(d) Decision. The decision upon a contested case shall be a binding action in the form of a written order to accept specifically, modify, reject, the appeal decision and render a final decision or remand the case for further hearing. If written findings of fact, reasons an conclusions about

the application of the UIL rules in the case of rejection.

Section 123. Ex parte consultations. No person shall consult out of the presence of all parties to the case with the hearing officer or members of the body deciding the case. Provisions with respect to ex parte consultations, the adminstrative procedures Texas Registers Act may be used as a guide to handling such matters in contested or uncontested cases pending from the UIL.

And then we move to subchapter "j". Rules and amendments. Which I consider to be probably not germane in this case. One thing I was looking for. I'll ask Mr. Boy, maybe

Mr. Nolan can aid, if he does not, where is the provision for appeal to a district court?

Mr. BOYD: Your Honor, the rule 409 not only does not, the rules here do not direct the parties to the Court first of all.

THE COURT: I didn't hear your last statement.

MR. BOYD: The rules here do not direct the parties to the Court. These are intended to govern the UIL activity. But rule 049, transfer issues, are the one eligibility category which does not even have an appeal within the UIL system.

In other words, other provisions on eligibility which may have to do with age or whatever it might be or the number of years somebody has been in high school, those kind of things have appeals within the UIL frame work. The one area has no appeal to a higher

body.

THE COURT: Is there any general provision that provides for any appeal?

MR. BOYD: Not in these rules for 409 eligibility request.

THE COURT: All right. Are you ready to proceed with your ten minute opening statement?

MR. BOYD: We are, your Honor.

THE COURT: All right, sir, you may proceed. Before you do, I'll ask counsel, what's your matter?

MR. BOYD: May it please the Court. I want to take the Court to one or two more quick areas the Court didn't quite get into.

THE COURT: I won't count that on your time if you want to give me some more rules.

MR. BOYD: Your Honor, Section 307 under Rules of Construction, it goes into general construction and then mandatory remissive directory or factual construction. And then part "C" concerns the prevailing authority of the UIL constitution over contest rules.

Subpart "D", which we think is germane here is that state law prevails over the UIL Constitution and Contest Rules, Texas State law, common law of this state. And anywhere -- it stays where any term of sec-

tion of the Constitution or Contest Rules is found to be inconsistent with the laws of the State of Texas, the law shall prevail. And the remaining terms and sections of the Constitution and Contest Rules shall continue in effect.

THE COURT: What is that rule, paragraph and line?

MR. BOYD: Section 307, subpart "d".

THE COURT: It says where found in conflict.

MR. BOYD: Where in conflict, the rules of law prevail over the UIL Constitution and Contest Rules.

THE COURT: All right, sir, 308 "d".

MR. BOYD: The other couple of items that I think will be of interest to the Court is that under section 408 the definition of residence is given.

Section 408 "G" concerns the criteria of residence and defines what a resident of a school district is and goes into owning or renting residences, receiving mail and so on. And that's 408 immediately prior of course to 409, which the Court has already read.

The additional section of significance to the Court, some materiality is section 410, the determination by the District Executive Committee.

THE COURT: What I'm going to ask you to do is at the noon break get copies of these so I have everything you've given me before me. I don't need them right now.

MR. BOYD: Yes, sir. This one for the Court's guidance does note that if the District Executive Committee where the student now lives finds from the preponderance of credible evidence that the change in residence was not made for athletic purposes it shall declare the student a resident of the new school district and attendance zone and eligible to participate.

If there is insufficient evidence to justify the school district from which he moved to refuse to state that he was not recruited and that the change was not made for athletic purposes, the District Executive Committee where the student now

lives may declare him eligible.

In other words, if the sending school doesn't have enough background on the child, something to that effect, and can't certify by their signatures on the appropriate forms that they believe that he was not recruited and the move was not for athletic purposes, the District Committee can still allow him to play.

In fact, the sending school does not know the chill is disenfranchised if the District Executive Committee where he now lives find that the change was made for athletic purposes it shall declare him ineligible to participate in athletic contest for one or more years.

So, if the committee finds that the change was made for athletic purposes, then it declares him eligible. The real, not

really a quirk but difference in application is where there is insufficient evidence one way or the other, the District Executive Committee can still do what it likes. I believe that's the last of the procedural matters that I had to point out to the Court.

THE COURT: We will begin. It's approximately ten minutes till. You may go forward.

MR. BOYD: May it please the Court.

The Court has gone through the subchapter "h" provisions which the various superintendent, representatives, and school representatives admitted they attempt to follow in

insuring fairness in the consideration of eligibility issues.

There's some really key statements that the Court read as it went through the rules. And this is beyond notice. Under Section 119: The cases shall be decided by the vote of its impartial -- a very important word -- impartial members.

Then in situations where appeals to the State Executive Committee are allowed under Section 122, and this not such a matter, but the policy of UIL I think is important. But where appeals are allowed and under other sections it says the State Executive Committee, if the State Executive Committee determines that the decision was beyond the jurisdiction of the UIL was arbitrary, not based on substantial evidence, or capricious, the committee shall reverse.

What is important here, this is a UIL policy. This is not a policy of Plaintiffs or policy of anybody else. This is UIL policy. If the committee finds that it was arbitrary, or not based on substantial evidence or capricious, the committee shall reverse. And under their own definition, shall is mandatory.

THE COURT: Are you saying that's a general statement of policies?

MR. BOYD: I would say it's a specific statement of policy. And it's a mandatory reversal if they find that the decision below has been made on such basis.

THE COURT: Except that there's no provision for review in this instance.

OPENING STATEMENTS

MR. NOLAN: Very briefly, your Honor, the point that we want to make today is that this is a matter that had been brought District 9 AAAAA Executive Committee. It was a school matter. These are school personnel, they're not lawyers, they're not judges, they're not trained in the law, and they usually do not give full length trials to the matter that you have brought before you.

However, in this instance, as you will be able to determine from listening to this transcript, we practically conducted a full-blown trial. And even though this full-blown trial was conducted, the District Executive Committee made the determination that based upon what they heard in that hearing that Greg Jones had, and his family had moved for athletic purposes.

We think that the evidence in this transcript is sufficient to uphold that. If this Court in reviewing the evidence of the transcript finds that there was some evidence to withhold that, then we think the standard of law is that it should be upheld. I don't believe the standard is that this Court should substitute its judgment for that of the school.

THE COURT: Let me speak to that right now, Mr. Boyd and Mr. Nolan. The Court does know that there is prescribed procedure for conducting of a hearing. At this time I am not prepared to say that this would be either limited to another -- whether there is substantial evidence to support.

their position or whether it would be whether they complied with their rules, their own rules for the conduct of a hearing. I can see that I'm going to be viewing it on the basis of at least both of these contexts because otherwise the rules would meaningless.

MR. NOLAN: As it's pointed out in the beginning of those rules, these are suggested procedures. These are not mandatory for this type of action.

Now, if someone is being hired or fired, then they come into play. For this type of action they are suggested for the District Executive Committee.

And I might point out to the Court that those rules are no longer in effect. They were in effect in March. Not in effect in all. The reason that this rule has been

changed is this very situation. The schools cannot hold full-blown trial every time you make a determination of this Court or they'd be holding 30 or 40 trials a year and they'd be --

THE COURT; All right, sir.

MR. NOLAN: We maintain that they developed their rules. The procedure they gave was that which was called for in subchapter "h". Even though it was not necessary, the suggested procedure that they followed it all except for the part I think that requires written instead of telling the Joneses what they were doing, that they write it down and tell them. Write down what they found and what they concluded. Instead, they simply

CROSS OF MR. QUALLS - by Mr. Boyd

Q. When you say you check out your own, you check out your own from the standpoint of the sending school, the receiving school, or both?

A. Both.

Q. Are you aware of any PAP requests which you have not -- which have been submitted to the committee which you've never investigated while you were working for Dr. Poteet?

A. No.

Q. Okay. Coach Qualls, if Dr. Poteet related that there were times that there were submissions at the meetings themselves and that you didn't have time to investigate would that be a true or false statement?

A. Well, that would probably be a false statement. If they submit them at the executive committee, then there's not reason to

check them because all of the principals are involved, the coaches that are there, the principals that are there, the sending and receiving schools.

Q. So it would be false to the extent that there have been instances where they've been presented at a committee meeting and you have not investigated?

A. Yes.

Q. In connection with Greg Jones' eligibility requests, could you tell the Court what the circumstances were when you were initially told about the application.

A. Well, when I received the application, Dr. Poteet

brought it to me and it had a letter attached to it from Snowden and so I called Bo and that initiated the process.

Q. As far as you were concerned, at that time was it just a typical transfer request at that time?

A. No, not really, I don't think. Because the letter was attached. And the circumstances surrounding that particular letter.

Q. You normally did not have letters?

A. No.

Q. Okay. Was there anything else that you thought was different about this PAP request?

A. No, not really.

Q. At this time I'll show you Exhibit Number 7. Is this the letter from Bo Snowden to which you have made reference, sir? The

first page being a letter from Bo Snowden to Dr. Poteet; the second being a memorandum from Coach Snowden; and the last page being a PAP form.

A. Yes, I believe this is.

Q. All right. sir, and there's no special meeting requested, is there?

A. No.

Q. Just the next regular meeting.

A. Well, yes, just the next regular meeting.

Q. Okay. I would like to take you to the August 9 ad hoc committee meeting.

THE COURT: Yes, sir.

MR. BOYD: Page 54, lines 22 through 25.

Q. Why don't you just read line 17 through 25 in the record?

A. "Did Mr. Johnson indicate to you in your conversations with him prior to the District Executive Committee meeting whether or not he had spoken with the superintendent of Garland about the matter?"

Yes was my answer.

And then the questions: What did he tell you?

"ANSWER: He just said that he had talked to him about it and that they were anxious to do something about the situation."

Q. All right, sir.

A. The situation that I was referring to was transfers in general.

Q. Prior to this Executive Committee meeting thought there was only one transfer that you knew of, wasn't there, only one transfer prior to the Executive Committee meeting that was being discussed, wasn't there?

A. I think this first meeting was to discuss transfers in general and specially consider this one.

Q. In fact, do you recall me asking you right after that whether or not you had a feeling when you went to the meeting since they had a majority vote, Garland, did you have a feeling

what was going to happen? Do you remember me asking you that question?

A. I don't remember, but I'm sure you did.

Q. Let me take you to page 55, lines 1 through 7. If you would read that for the Court, please. My questions first.

A. "So did you have a feeling when you went to the meetings the majority vote -- did you have a feeling what was going to happen?"

"Well, I did personally, yes.

Q. All right, sir, thank you.

Prior to the meeting you had a feeling of how Garland was going to vote, didn't you, personally?

Q. That's what I said.

Q. And that's still the truth isn't it, Coach, that's still the truth?

A. That's still the truth.

Q. And you know, don't you, Coach, that decisions are supposed to be made based on the evidence produced at a hearing, don't you?

A. Well, normally in a trial, I guess, but we really didn't consider this a trial, I don't think.

Q. Coach Qualls, you know -- don't you understand through all of these years of experience that the students and families and administrators believe that decisions are going to be made at these Executive Committee meetings on transfer issues on

evidence presented at the hearing, not on things that go outside the hearing?

A. We normally don't have hearings.

Q. Coach Qualls, do you understand through your many years of experience in this kind of District Executive Committee hearing, meeting, whatever you want to call it, that parents, students, administrators expect decisions to be made on what's presented at the hearing, not on things outside of the hearing, on things at the hearing?

A. Well, as I said, we normally don't have hearings. This is the first one we've ever had.

Q. Yes, sir, I know that. But all of the other considerations have been on things that have been talked about at the hearing, not outside the hearing, right?

A. Right.

Q. That's the proper way to do it, isn't it?

A. That's correct.

Q. And you wouldn't think it was very fair if it was your child if people were making up their minds before they even attended the meeting, would you?

A. I probably wouldn't.

Q. You remember in your deposition when we talked just

is it, it's more concrete?

A. Recruiting is more concrete, right.

Q. Yes, sir. Would it be fair to say you know recruiting when you see it?

A. I think so.

Q. You recall during the March 20, 1985 meeting hearing Dr. Poteet relating to any anonymous telephone call?

A. I believe he referred to it, yes.

Q, Okay. And you were previously aware of this, correct?

A. Yes.

Q. Prior to the meeting. And in fact, after you had chatted with Coach Overton it was sometime after that you found out about the anonymous phone call, wasn't it?

A. Yes.

Q. Did Dr. Poteet tell you anything about the anonymous phone call?

A. No, he just said had received one.

Q. Okay, did he --

A. As a matter of fact, he went into details about it.

Q. Okay. A moment ago you related to the Court that this is the only time this has ever happened in recent history I guess you would call it. Isn't it far to say that no other student has had the burden of having an evidentiary hearing required of him or her over a transfer request where both sending and receiving school have approved it?

CROSS OF MR. QUALLS - by Mr. Boyd

A. Well, we -- in fact we have denied a couple of other students in volleyball, I believe.

Q. But when the sending and receiving schools have approved it? Are you talking about Wilmer Hutchins?

A. Yes.

Q. That was a paper work problem?

A. Right.

Q. But when the paper work is right, and the sending and receiving school have approved it, no student has ever had an evidentiary hearing burden pushed open them?

A. That is correct.

Q. Just been routine approval, read the names out, everybody says okay. They talk about it and approve it generally.

A. Yes, after we check with the schools involved.

Q. Yes. The same ones that sign the athletic participation form?

A. Yes.

Q. Now, since the March 20, 1985 hearing on the eligibility of Greg Jones eligibility or transfer request, has any other student been required to submit to an evidentiary hearing in order to have their PAP form properly completed approved?

A. No.

Q. Okay. And in fact since that date there have been

some PAP forms that have been approved that aren't been complete?

A. I don't know.

Q. Aren't you aware of some at the September 1st meeting that were approved subject to completion of the paper work?

A. Yes, but I don't know whether they've been completed or not. Highland Park has those.

Q. Okay. The point is that they were approved by the committee even before they were completed?

A. Right.

Q. And those children did not have to have an evidentiary hearing, they just needed to complete the paper work?

A. Most of them were out of state.

MR. NOLAN: I object to the relevance. We have testimony that

subchapter "h" calling for that is no longer in effect; therefore, what happens now as to whether they require a hearing on it is totslly irrelevant.

THE COURT: Counsel, will you advise the Court when was it eliminated?

MR. NOLAN: It was in May of this year. The only testimony we have is that it's no longer in effect and I will present the exact date and a copy of the new rule. But we don't have anything -- subchapter "h" was not in effect during these most recent September hearings and what they did as far as the evidentiary hearings, it's a totally new procedure. It's not

READING FROM THE DEPO OF DR. POTEET

THE COURT: Counsel, at this time you may find the portions in the deposition of Dr. Poteet, if you wish. We're permitting Mr. Boyd to present portions of Dr. Poteet's deposition.

MR. BOYD: At this time, I would further point out that we would request the Court Reporter in addition to looking up the part that Mr. Nolan wants the Court to recall, to look up the other portion, which he doesn't want to recall which was the direct examination testimony that they tried to follow subchapter "h". He admitted that that's what he said in your deposition.

THE COURT: You mean on your adverse inquiry?

MR. BOYD: My adverse inquiry, on leading questions he did say something a little bit different, before he got to that.

THE COURT: WE will come to that in a moment. Let's hear what Dr. Poteet said on the deposition. Page 30, what line.

MR. BOYD: 36, your Honor, through 52.

THE COURT: All right.

MR. BOYD: Line 1.

READING FROM THE DEPOSITION OF DR. POTEET

"QUESTION: Okay, did you participate in the drafting of this subchapter?

"ANSWER: I do not recall. No.

READING FROM THE DEPO OF DR. POTEET

"QUESTION: If it was drafted after the 1981 Texas Supreme Court decision which struck down the University Interscholastic League restriction on transfer students, would you have been involved?

"ANSWER: I would have voted, yes. I would not have been involved in the drafting."

"Mr. Nolan: When you say quote, this chapter, unquote, you mean subchapter "h"?

"Mr. Boyd: Yes, sir.

"Mr. Nolan: Perhaps just for the record, so you won't be confused, subchapter "h" is not something which is passed by the legislative counsel. They don't have any control over it. It's simply the policies of the University of Texas and its dictated by University of Texas. If they like it or they

don't like it they do not have any control. It was for your edification once again fairly recently simply by dictate of the University of Texas.

"QUESTION: But you testified earlier that you don't know of any detriment to following these procedures, correct?

"ANSWER: Well, I know it's there. In my position, I know it's thee, right, but I could recall ever having been that involved in the details of it.

"QUESTION: Do you know whether or not in addition to being there that it's recommended that you follow those procedures in contested cases?

READING FROM THE DEPO OF DR. POTEET

"ANSWER: Yes, it would be recommended.

"QUESTION: And if UIL recommends it, you don't know a good reaons for not following that recommendation, do you?

"ANSWER: We would try to, yes.

"QUESTION: Subsection "d" says that contested cases that are covered by this subchapter are presumed to be contested until they're formally settled. Within your experience the purview of your experience with the UIL, what does formal settlement mean to you?

"ANSWER: Well, if we makd a decision in the Executive Committee, then if there's an appeal process, then it goes to the appeal process.

"QUESTION: If ther's no appeal process then it's final at that time?

"ANSWER: If that's what the rules state.

"QUESTION: How have you conducted your committee in the past? Have you considered matters formally settled at the time the committee made its decision?

"ANSWER: Yes, sir.

"QUESTION: And in section 102 there on the middle of page 38 it talks about notice of evidentiayr hearing, and under subpart "a" it talks about in all contested cases, all parties including applicants and so must be afforded the opportunity for an evidentiary hearing by the appropriate UIL body after reasonable written notice. My question in that regard is: In

READING FROM THE DEPO OF DR. POTEET

this situation, do you know if there was ever any written notice given to the family or the child that, as to when consideration would be given for Greg Jones to participate in varsity football in Highland Park?

"ANSWER: That information was sent to the sending school. I mean to the receiving school, Highland Park.

"QUESTION: In this connection do you know whether or not all parties, that being the parents and their child, do you know if they were given notice of the hearing?

"ANSWER: No, sir, I do not.

"QUESTION: Do you know if under Section 102 B, concerning written notice that if there was even written notice provided --Well,since there was not written notice given to the parties, let me ask you this:

Was there written notice provided anyone that set forth all of the matters there, sir, under Section 102 B, which would be, (1) the statement of the date, times, date, days, time, place, and nature of the hearing (2) a statement of the rules under which the hearing is being held; (3) a reference to the particular sections of the rules involved; (4) a short and plain statement of the matters asserted including the various matters there under subpart 4. Do you know if a letter setting forth all of those elements was ever sent to anyone?

"ANSWER: Yes. There was a letter sent to the superintendent stating that there was this emergency meeting to

be held. A request for transfer and then as per always in our meeting, there was an agenda prepared that was posted and such as we post for all meetings.

"QUESTION: Do you know if those two documents, and I'll go over those with you later, do they comply with the items that are set forth for written notice under the rules, if you know?

"ANSWER: To the best of our ability, right.

"QUESTION: But you're not stating one way or the -- but you're not stating one way or the other whether or not they comply?

"ANSWER: No, sir, I'm not.

"QUESTION: Under section 103 under evidence and argument it notes that in all contested cases opportunity shall be afforded for all parties to respond and present evi-

dence an argument on all issues in addition to and beyond any written notice to the Jones' family or the Jones' child. Did you at the time of that District Executive Committee session afford them the opportunity to be present and present evidence? Did you personally?

"ANSWER: No, sir, there was nothing contested.

"QUESTION: Was there as far as when you say there was nothing contested, do you believe that the family and the child went along with the decision? Did you have reason to believe that they were going to go along with the decision or anything

to the contrary?

"ANSWER: I knew that they had the right to appeal to us.

"QUESTION: Did you ever send that to them in written fashion?

"ANSWER: Did to Highland Park Independent School District, right.

"QUESTION: And you sent it to the family through the Highland Park Independent --

"ANSWER: No, I sent it to Highland Park Independent School District.

"QUESTION: If the family and the child are considered parties insofar as this contest is construed by the Court, did you ever send anything to them whether in care of Highland Park Independent School District or any other address affording them the right to present evidence an argument on any issues

relating to the eligibility of their son?

"ANSWER: Never sent anything to any parent on any case whether it was positive or negative. Always to the schools.

"QUESTION: Now, the, to make sure the record is clear, and we'll go over your documentation in a little while, you are saying that you sent something to the school which would have put the parents and child on notice that they had the right to be present and present evidence?

READING FROM THE DEPO OF DR. POTEET

"ANSWER: At least to uour decision and the reason for our decision, right.

"QUESTION: Let me rephrase that.

"Mr. Boyd: Object, non-responsive.

"QUESTION: The question I'm asking, Dr. Poteet, is: Do you recall, and we'll go through the documentation, having sent any kind of written documentation to Highland Park Independent School District setting for the fact that the parents and the child could come and present evidence before the executive committee?

"ANSWER: Not specific data.

"QUESTION: Section 105 relates to the record of evidentiary hearings at the bottom of page 38 and it notes the contents for record in a case. Number one would be plead-ings, motions, and intermediate rulings. Other than request to the parents

which was evaluated by the sending school and the receiving school, were there any other pleadings or documents of such a nature that were considered at the hearing?

"ANSWER: Only information from athletic directors. In larger school districts, as Superintendent of Schools, we delegate most to your athletic directors. So normally if there's any type of meeting to be conducted outside of the regular Executive Committee meeting in which the superintendents take the action, most of that is done by the athletic directors for the larger schools, and as superintendents, we don't do

that.

"Mr. Boyd: I object, nonresponsive.

"QUESTION: The question, and I apologize if it's unclear, the question I'm asking is: Are you aware of any other documentation other than the request by the parents for the child's eligibility, which was evaluated by the sending school in Irving and the receiving school in this 9 AAAAA district, were there any other documents that were considered?

"ANSWER: No, sir. I'm sorry, no, sir.

"QUESTION: Number 2 says the record will consist of the evidence received or considered. How did you record the evidence which was received or considered at the hearing?

"ANSWER: Did not record it.

"QUESTION: So you didn't have a tape recorder or a Court Reporter?

"ANSWER: Never.

"QUESTION: Did you have at this hearing any person who was assigned the responsibility by formal motion of the committee to take minutes or notes?

"ANSWER: We normally have one of the principals of one of the high schools to take those but since there was only one item on the agenda, I was the one responsible to take the minutes and so there was really only item for consideration.

"QUESTION: Did you in your documentation write down and record the evidence that was received or considered. Who

appeared, those kinds of things?

"ANSWER: No, sir.

"QUESTION: Did you record that?

"ANSWER: Did not.

"QUESTION: Number 3 says that statements of matters officially noticed are also part of the record. Did you officially notice any particular facts in your position as the chairman? Do you recall whether you made what is called official notice of any facts?

"ANSWER: No, sir.

"QUESTION: Number 4 says records should contain questions and offers of proof, objections and rulings. Does your record contain any questions and offers of proof, objections or rulings?

"ANSWER: No, sir.

"QUESTION: Number 5 says the record

shall contain proposed findings of fact and conclusions concerning the applicability of the rules. Does your record contain any proposed findings of fact?

"ANSWER: Only record that would contain those facts is the letter that was transmitted to Highland Park Independent School District outlining the reasons that we took our action.

"QUESTION: But there's no proposedf findings of fact and conclusions?

READING FROM THE DEPO OF DR. POTEET

"ANSWER: No, sir.

"QUESTION: Number 6 says any decision, opinion, reasons or report by the hearing officer and other than this letter that you're talking about to the Highland Park folks, you're not aware of any decisions, opinions, or reasons, or reports?

"ANSWER: There are none.

"QUESTION: And finally, Number 7 says that there should be considered as part of the record all UIL staff memoranda or data submitted are to be considered. Was there any UIL staff memoranda at the time of the hearing considered?

"ANSWER: No, sir.

"QUESTION: Was there any in addition to the request for eligibility by the parents, that was evaluated by the sending school and receiving school? Was there any

other data submitted that was considered?

"ANSWER: No, sir.

"QUESTION: No, sir.

"Mr. Nolan: Can we have just a minute? I may be able to save all of us an awful lot of time.

"Mr. Boyd: Why don't we talk out in the hall. Yeah, off the record would be good."

There was a recess.

"QUESTION: Section 106 relates to findings of fact, reasons and conclusions, and section 106 which is promulgated notes that findings of fact, reasons for financial decision and

READING FROM THE DEPO OF DR. POTEET

conclusion about the application of the rules to the contested case shall be based exclusively on the evidence and matters officially noticed at the hearing. Do you know whether or not any findings of fact, reasons for final decision and conclusions were made which were based exclusively on the evidence in matters officially noticed at the hearing?

"ANSWER: Our decision was based on everything that was presented at the hearing.

"QUESTION: Okay, we'll to into that later. And exclusively on that evidence, is that correct?

"ANSWER: That's correct.

"QUESTION: Under section 107, the hearing officer, it says that hearing officer shall have the responsibility to (1) hear the committee, receive and file any requests for an evidentiary hearing. And you say you did

send out a notice to the different superintendents that there would be a hearing on this matter. (2) to determine parties and interested persons. Did you ever render any written determination of parties or interested persons?

"ANSWER: No, it was sent as per usual to the school superintendents on the committee.

"Mr. Boyd: Object, non-responsive.

"QUESTION: My question may not be clear and I apologize. In this connection, did you ever in writing determine the parties or interested persona in a written

READING FROM THE DEPO OF DR. POTEET

document?

"ANSWER: No, sir.

"QUESTION: Number 3, it notes that the person should direct the contesting parties and interested persons to appear at a specified time and place for prehearing conference. There was no prehearing conference.

"ANSWER: No, sir.

"QUESTION: Number 5, the hearing officer shall conduct the hearing in accordance with the UIL constitution and contest rules.

"ANSWER: I'm no hearing officer.

"QUESTION: I understand that, but as far as being in charge of the consideration, hearing, whatever word we want to use, you were in charge of that?

"ANSWER: That's correct.

"QUESTION: And you've already

testified on the advisability or not of following UIL Constitution and Contest Rules, correct?

"ANSWER: (Witness nods);

"QUESTION: It says that the hearing officer or person in charge should examine witnesses. Did you examine any witnesses at that --

"ANSWER: No, sir.

"QUESTION: Number 8. It says the hearing officer should receive evidence. Did you receive evidence at the

hearing?

"ANSWER: We received evidence.

"QUESTION: At the hearing?

"ANSWER: Well, at or regular hearing meeting of our 9 AAAA District Committee, yes, sir.

"QUESTION: Number 9 says that there shall be a ruling on the admissability of evidence. Were there any rulings on the admissible of any evidence?

"ANSWER: No, sir.

"QUESTION: Number 10 notes that there should be a request for persons to appear and testify. There wasn't any such request, was there, that you know, sir?

"ANSWER: No, sir.

"QUESTION: And on to number 13. To keep a complete record of each evidentiary hearing. And do you or do you not have a

complete record of the evidentiary hearing as to everything that was considered and ruled upon?

"ANSWER: No, sir.

"QUESTION: Section 110 at the bottom of page 40 deals with admissible evidence and it very clearly, in section 110 B, notes that the Rules of Evidence don't apply other than to give effect to the rules of privilege. It notes under subpart "C" the manner in which handling objections should be handled. And it says objections to evidentiary offers may be made and shall be noted in the record. Do you recall noting and ruling on any

READING FROM THE DEPO OF DR. POTEET

evidentiary objections?

"ANSWER: No, sir.

"QUESTION: Section 111 deals with the testimony to be considered at these hearings and notes that the witnesses shall be sworn. And take their -- and take their testimony shall be taken under oath. Do you recall swearing any witnesses?

"ANSWER: No, sir, didn't swear any witnesses.

"QUESTION: Did you take any testimony under oath?

"ANSWER: No, sir.

"QUESTION: Section 112 notes that in a contested case a party may conduct such cross-examinations as may be required or a full and true disclosure of the facts. Were those persons who allegedly gave evidence at this hearing, were they cross-examined by

anyone?

"ANSWER: Yes. Everybody could ask question they wanted to.

"QUESTION: How many witnesses did appear at your hearing in this instance?

"ANSWER: Only two.

"QUESTION: Okay. And who was witness number one?

"ANSWER: Mr. Charles Qualls, Athletic Director at Mesquite. I'm not sure Mr. Homer Johnson is a witness or not. He is on the committee but he did give evidence.

"QUESTION: Well, let's start with -- Okay, we noted just a second ago that section 111 referred to sworn testimony

and that witnesses should be sworn and give testimony under oath. But for the record, it's clear that neither Mr. Charles Qualls nor Mr. Homer Johnson were sworn.

"ANSWER: That's correct.

"QUESTION: To your knowledge to this date they have not given testimony under oath.

"ANSWER: No, sir.

"QUESTION: Who examined Mr. Charles Qualls? Who directed questions to him to which he gave answers?

"ANSWER: Committee members.

"QUESTION: Was it an informal type?

"ANSWER: Very informal, right.

"QUESTION: And Mr. Homer Johnson? The same way, an informal questioning?

"ANSWER: Yes, sir, that's correct.

"QUESTION: And who cross-examined

Mr. Charles Qualls to test the veracity of his testimony and to test the authenticity of the facts that he related?

"ANSWER: Anybody on the committee.

"QUESTION: Do you remember anybody that cross-examined him and questioned?

"ANSWER: No, there was an exchange back and forth but I can't recall exactly, no.

"ANSWER: Do you recall whether Mr. Charles Qualls was cross examined? That is challenged by the representative

READING FROM THE DEPO OF DR. POTEET

from Mesquite?

"ANSWER: No.

"QUESTION: Was Mr. Charles Qualls challenged by the representative from Garland, that is to say his authenticity and his veracity?

"ANSWER: No.

"QUESTION: Was he challenged by the representative from Wilmer Hutchins?

"ANSWER: No.

"QUESTION: And as I understand, Highland Park abstained from participating in the meeting?

"ANSWER: That's correct, sir.

"QUESTION: Is that correct? So Mr. Charles Qualls was not challenged by cross-examination as far as that goes?

"ANSWER: He was asked questions by other members of the committee.

"QUESTION: But his recollection, his truthfulness and such things were not directly challenged by anybody, correct?

"ANSWER: No, sir.

"QUESTION: And is it fair to say the same as to Mr. Homer Johnson?

"ANSWER: That's correct."

MR. BOYD: That is the major examination over the rules, what they did and what they did not do according to the rules and their attempts to comply.

CONTINUED CROSS OF COACH QUALLS

Q. Do you normally give very much credibility to anonymous phone calls?

A. Not normally, but of course we tend to investigate, you know, if we can.

Q. Sure. Dr. Poteet said he recalled Coach Homer Johnson saying that he had talked with several Irving coaches about the situation and that he had learned the same things that you had related when you talked to the committee. Do you recall that?

A. Yes.

Q. In connection with the home environment of a given family do you agree that it's basically a good idea if a family can spend more time together and they're not strung out all over the City on the streets traveling back and forth?

A. Yes.

Q. And to use a shorthand, it is fair

to say that you might also think it's, as a professional educator, that there's some benefit to neighborhood schools where kids do not have such a hard time getting home and getting to school?

A. Yes.

Q. And as a professional educator are you of the opinion that a good more solid constructive home environment actually makes your job easier in school?

A. Yes.

Q. Would you agree with the statement that the family unit is the foundation or the core of our society and that its

importance is paramount?

A. Yes.

Q. And would you agree that any infringement on the ability of the family to be together and to exercise as a unit and familial affairs should be the most important interest if we're going to interfere with that?

A. You'll have to repeat that. You lost me.

Q. Yes. Yes. If there's any governmental function that's going to interfere with the ability of the family to be together and to function more often as a family it should be something very important, don't you agree?

A. Yes.

Q. Do you recall that prior to 1981 another transfer rule, don't you, one that

was struck down?

A. Yes.

Q. Before it was struck down by the Supreme Court, did you know that the trial court and the appellate courts had upheld it, were you aware of that?

A. No, not really.

Q. Before it was struck down by the Supreme Court, you enforced that rule just like everybody else in the UIL, didn't you?

A. Yes, sir.

Q. And like it or not, whether it's a good rule or bad rule, you enforced it because it was a rule, right?

A. I had a note on my desk yesterday to that effect.

Q. All right.

A. But that was not a district rule, that was just something that Dr. Power had instigated?

Q. Right. It is now the rule rather than the exception, correct?

A. As District Chairman, I suppose he has that right, right.

Q. In connection with the evaluation of PAP forms, after you receive -- you get the copy of the PAP form from Dr. Poteet in Mesquite?

A. Yes.

Q. Did you bring any of those with you in connection with the subpoena for documents?

A. No.

Q. What has happened to all of those PAP forms that were --

A. For this year?

Q. Yes, sir.

A. They have been given to Highland Park.

Q. All of them?

A. All of them?

A. Yes.

Q. Do you not retain any copies in your files?

A. We retain only our own copies.

Q. Students that we're asking for transfers for -- were

any of your submissions to the District Executive Committee on September 1st of this year incomplete PAP forms?

A. Yes.

Q. And were those conditionally approved subject to proper completion of the form?

A. Yes.

Q. Do you have any recollection of a PAP form submission in connection with a young fellow named Justin Alley from Irving McArthur to Highland Park, a transfer request about the same time as Greg Jones?

A. No.

Q. Were you even aware that a Mr. Justin Alley was seeking transfer eligibility at Highland Park, have you ever become aware of that?

A. No. No.

Q. When you evaluate a PAP form when you do conduct an investigation as opposed to when you don't, but when you do conduct an investigation, do you then make a recommendation to Dr. Poteet?

A. Yes.

Q. Is that in the form of written memorandum?

A. No, word.

Q. Just orally?

A. Yes.

Q. And in Greg Jones' case, that's what you referred to

yesterday of giving your feeling on the situation?

A. Yes.

Q. Would you agree that having an impartial panel to consider the evidence at the hearing is absolutely crucial to a fair consideration on these transfer issues?

A. No, not necessarily. I think that, you know, we've always in the past conducted them this way. We saw not reason to change it.

Q. But don't you agree that an impartial panel is crucial to a fair consideration?

A. If they ask for, you know, maybe if they want a rehearing or something I think it would be, yes.

Q. So you don't think impartiality is really a factor at the initial meeting but

it might be if they wanted a rehearing?

A. Probably.

Q. Okay. Is that basically how the Executive Committee has operated since you've been affiliated with it through Dr. Poteet?

A. Well, what do you mean? What procedures are you referring to?

Q. Just as far as partiality is concerned. In other words, if somebody wanted to rehear something, then that might be a consideration. If they didn't want to rehear something, then it wasn't a consideration?

A. Right, yes.

CONTINUED CROSS OF COACH QUALLS

Q. Do you agree that only the evidence that's presentd at the hearing itself, the meeting itself, though, should be considered by the members that are voting in determining your vote?

A. You'll have to -- I don't follow you what you're trying to get at.

Q. Do you agree that when the meeting convenes and the representatives of the various schools are going to vote, that that vote should be based only upon the evidence presented at that meeting?

A. Yes.

Q. Okay. Do you agree it would be improper to be basing that vote on things outside the meeting?

A. No.

Q. You don't think that would be improper?

A. I don't think so.

Q. Would it be proper to base your vote on things outside the meeting and not at all on what you hear in the meeting?

A. No, I don't think so. I think, you know, you've got to, in the business that we're in, I think that we were charged with the responsibility, so we have to get all of the information that we could.

Q. Yes, sir. When you get that information, though, shouldn't you reveal it in the meeting rather than keeping it to yourself?

Yes. Yes.

Q. Okay. What I'm saying is, if you get information somewhere else, you certainly should reveal it at the meeting rather than holding it in, don't you think?

A. Yes.

Q. And that's the only way that you can have a decision on evidence presented at a hearing, correct?

A. That's correct.

Q. And that's more appropriate, isn't it?

A. I think it probably would be.

Q. And do you feel that it's adviseable or authorized for you to conduct ex parte or conversations with people from other schools about an issue before the meeting is actually convened?

A. Well, it, really, as I say, we don't

conduct our business that way. You know we're not on trial, we don't have juries and, you know, we're not in that situation. We've been charged with responsibility of legislative carrying out the rules of the UIL. So I don't think, you know, there's two different areas I think we're talking about.

Q. Are you telling the Judge that as far as you're concerned, and as far as prehearing matters are concerned that you consider it okay to talk to other schools and give them your feelings on what you find or what you hear and that kind of thing before the meeting?

A. I think it is, yes, we've done that in the past.

Q. I don't believe I've asked you this question, but are you aware of any written or oral notice that was provided to the Jones family prior to the March 20, 1985 district 9 AAAAA District Executive Committee meeting on the Greg Jones transfer meeting?

A. No, I'm not aware of that.

Q. Have you ever even heard there was any notice?

A. No.

Q. Is it fair to say, Coach Qualls, that when you're judging someone as to whether or not they have moved for athletic purposes that in your mind if the main reason is the move for athletic reason, you know, athletic purposes, then it's such a move. If it's not the main reason, then it would not be such a move. Is that your position?

A. Well, I think the rule says if they move for athletic purposes.

Q. Well, what if the kid plays athletics at the school he was at before and he want to play athletics at the school he goes to, does that necessarily mean there's been a move for athletic purposes?

A. Not necessarily, no.

Q. If the main reason for the move is other reasons that ahthletics, would that be the kind of move that you normally approve?

A. Yes.

Q. Did you try to influence anyone's vote at the August 9th hearing?

A. No.

Q. Did you talk to anybody at that August 9th hearing about they way they should vote?

A. No.

Q. Did you write to them about the way they should vote?

A. No, sir.

Q. Did you indicate to them in any other manner the way they should vote?

A. No.

Q. I want to talk a little bit about the March meeting that was held by the District Executive Committee. Mr. Boyd asked you about partiality, whether you thought it was necessary that the members be impartial or not. What did you think he meant by that

question?

A. Non-biased in their opinion, not having their minds made up before they came.

Q. Do you think that it -- that the people in that March 9 hearing had their minds made before they came in?

A. No, I don't think so.

MR. BOYD: Objection, calls for speculation as what other people did.

THE COURT: Sustain your objection.

Q. In these hearings, I'm sorry, not in the hearings, in

if you ask me later I'm not going to admit it? That's not unusual?

A. Well, it's probably unusual, yes.

Q. But it happens?

A. It does happen.

Q. Does it happen in connection with the testimony you give?

A. No. Not, nobody -- I did not swear him in. He did not swear me in.

Q. Okay.

A. I'm giving sworn testimony today.

Q. And you weren't sworn in at the March 20 meeting, were you?

A. No.

Q. And there's not any way we can determine -- we don't get a signal from you when you're saying what you really fell and what your official position is, do we, there's no signal you give, is there, coach?

A. Probably not, no.

Q. Now, there's another reason that a coach might sign an athletic form that says that a child and family have not moved for athletic purposes. Can you think of another reason besides an actual move for athletic purposes?

A. Well, I guess he wouldn't move for athletic purposes.

Q. Right. Right, a bona fide move of a family.

A. Right.

Q. And if Coach Overton thought it was a bona fide move of the family then it would be proper for him to sign that statement?

A. Sure would.

Q. Coach Qualls, to be real direct about it in the 15 or 20 or so years that you've known Coach Overton, have you ever known him to lie to you?

A. No.

Q. Earlier you were asked about subchapter "h" and the rules that are followed in contested cases. Other than Greg Jones, you haven't had any other contested cases on eligibility transfers where sending and receiving schools have approved the PAP form in the last ten years?

A. If we have they've been taken care of by the school itself.

Q. But you haven't had any contested matters that arose people giving evidence, that kind of things, and people being present arguing?

A. Not on transfers.

Q. So there wouldn't be any need to use the rules on contested cases unless such an occasion arose, correct?

A. I believe that would be correct.

Q. And this is the only time you can remember recent history of such a thing has arisen?

A. Yes.

Q. Do you recall counsel's question to you about whether or not you would know a move for athletic purposes if you say it?

A. Yes.

Q. Do you remember your testimony yesterday, it's pretty hard to look into the mind of any individual to determine their intent?

A. Very difficult, yes.

Q. No, after the March 20, 1985 hearing, what do you recall is the first instance that you chatted with that -- about that with any of your principals? Just the first instance?

A. I don't recall.

Q. You just don't recall it. Are you saying you didn't or that you don't recall?

A. I don't recall.

Q. But you're not denying?

A. You're asking me the first time.

Q. Yeah, the first overturn, the first vote of ineligibility. You're saying that you do not recall talking to either of your Mesquite principals at all about that hearing?

A. No. No.

Q. Are you denying that you did?

A. I'm not denying I did, no, we could have.

Q. And does -- to make sure your answer is clear Mr.

Q. In fact, prior to the March 20, 1985 vote which you made on behalf of Garland in the Greg Jones hearing how often prior to that had you voted for Garland on transfer issues?

A. Well, I can't remember exactly. Sometimes, but not, you know, regularly. Our superintendent is in Austin a lot.

Q. Okay.

A. Any time he's out of town, I represent him. So, I couldn't tell you exactly how many.

Q. Generally, there are one or two meetings a year, is that right, for transfer requests?

A. Probably three. Usually before football and before basketball and for spring sports.

Q. Okay, sir.

A. I mean that's the way I remember it.

Q. And is it safe to say that prior to the March 20 vote that you actually can recall having voted before on transfer issues at District Executive Committee meetings or you can't remember?

A. I can remember, yes.

Q. It is also fair to say, Coach, that during this time period that in your district where the sending and receiving school have both approved the transfer that Greg Jones is the first time that a matter arose to this level of evidentiary hearings?

A. The first one I can remember.

Q. In your deposition you said the first time in about 37 years, didn't you?

A. It's the first one I can remember. I don't remember, you know, exactly what I said in the deposition.

Q. Do you recall my question on page 33, line 10?

My question to you:

"QUESTION: In 37 years, though, you can't recall or since you've been Athletic Director since '62, ever voting against a child whose sending coach and receiving coach and their administrations have approved the transfer, can you?

"ANSWER: This is true.

Does that sound like what you said in your deposition?

A. Yes, this is true.

Q. In 37 years would you tell the Court

whether or not there's ever been a close call other than Greg Jones, to you, a close call on whether or not there's been a move for athletic purposes or for recruiting?

MR. NOLAN: Your Honor, I want to object to that questions because it's assuming a fact that's really not in issue. These rules haven't been around for 37 years, and I think that that --

THE COURT: Sustain your objection as to the particular phraseology.

MR. BOYD: Thank you, your Honor.

Q. Since the rules have been in effect, have there been

any other transfer requests on which you've had a question about whether or not a student has moved for athletic purposes or has been recruited in your district?

A. Some that we've checked on. I mean, you know, we've had parents write a letter. We've requested the other superintendent and this type of thing. You know, I don't -- I can't recall any, you know, just exactly the specific time or place or person.

Q. Do you recall any other student on which you have allegedly received information that indicated to you there was a possibility, possibility of a move for athletic purposes other than the young man that's the subject of this litigation?

A. I can remember us instructing the district chairman probably to check with the superintendent of where the certain people

came from and this type things as to, you know, why the parent moved and things of this nature.

Q. Did you ever have in your mind, in the back of your mind when considering any other transfer requests, since the rules have been in effect, the fact that a particular student might have moved for athletic purposes, other than Greg Jones, ever?

A. I can't recall, you know, offhand of any specific case.

Q. Is it your feeling that no other student who has transferred between these district, that you have considered,

is it your general feeling that there have not been any moves for athletic purposes, other than this disputed case?

A. No, I wouldn't say that, because, you know, I don't know.

Q. If you don't know and you have suspicion, is an evidentiary hearing one way to try to bring it up to a head?

A. Well, if I had any proof or reasonable doubt or something, I would. If I was the representative, yes, I would question it.

Q. Have you ever requested another transfer besides Greg Jones to the extent that you questioned this?

A. Not to the extent this has been questioned, not to where it got in court, but we've questioned them on numerous occasions, you know, about why did somebody move or --

Q. I apologize. When you have

requested them have you ever asked anybody else to bring in witnesses to make statements to the committee? Anybody else, any other student?

A. Not to my knowledge that we've called anybody to come in. Usually it's done through the superintendent and their athletic director or coach from the receiving school.

Q. And always before, all other students have basically just had to submit additional written materials, correct?

A. Well, that was correct because it satisfied our needs.

Q. Right.

A. In other words --

Q. Any time there's been a question before, there's not been a requirement of an evidentiary hearing, it's merely been satisfied by submitting additional written material that satisfied the committee, correct?

A. True.

Q. Okay. And since the March 20 meeting at which Greg Jones' eligibility issue was considered, there have not been any other instances in which you required any other student to assume an evidentiary burden, that is to say bring in witnesses to try to prove to you anything; is that correct?

A. This is true.

Q. Is it also fair to say that in connection with this case there's absolutely no hint of recruiting?

A. I would say this is true.

Q. Have you known Coach Overton in the past, Coach Johnson?

A. No, I did not know Coach Overton before this.

Q. Have you discussed --

A. I've known of him. Not personally, no.

Q. Do you know anything of him professionally, whether or not he's been active in any of the associations or any of those things?

A. I know he's a good coach. He was I believe at Abilene Cooper and had a good record and has done well since he's been at Irving McArthur.

representative prior to a vote whether or not you felt like you would approve or disapprove a particular application when it was presented?

A. We discussed things I'd say all of the time before. Like, for instance, just to give you an example, last year our -- two of our girls' basketball teams were disqualified because we had girls that had played at another school that we didn't know about and Wilmer Hutchins had one and I discussed with Coach Qualls about this prior to the vote not asking him to vote for us, but just discussing the situation, because I knew he was going to vote by the book and I would have done the same thing to him.

Q. Now, the Wilmer Hutchins matter, though, didn't involve a move for athletic purposes, that had to do with the completion

of paper work?

A. That was a very important thing because we had to forfeit all of our games and they did, too, so it was very important.

Q. It had to do with paper work, though, didn't it, paper work?

A. It had to do with --

Q. Just filling out paper work?

A. And getting it approved.

Q. Yes, sir, submitted.

A. This is true.

A. And about our situation at the same time because we were involved in it, too.

Q. You remember very well, correct?

A. I couldn't tell you the specifics, I just remember talking to him about the --

Q. But at least you remember talking to him about it?

A. This is true.

Q. But two months after this event, isn't it a fact you couldn't even remember talking to him about this subject, about Greg Jones?

A. No, I remembered talking to him, I just couldn't tell you the specific time that I talked to him.

Q. You couldn't even remember that you had talked to him about the Greg Jones situation prior to the meeting which was only two months prior to your deposition, correct?

A. No, that's not correct. I told you that I had talked to him, that I just couldn't recall the time, whether it was before or after.

Q. Is that what you told me, coach?

A. That's the way I remember it.

Q. MR. BOYD: Request that I approach the witness, your Honor, for reading of a deposition.

THE COURT: You may.

MR. BOYD: Page 20, line 23.

Q. Coach, our procedures are, if you will follow along

with me, if I have read anything improperly you let me know. Line 23, page 20.

"QUESTION: It would be improper if people were trying to conduct a kangaroo court and have hearings, ad hoc hearings away from the body itself, wouldn't it?

"ANSWER: This is true.

"QUESTION: As a result, are you generally careful to see that consideration of allegations and evidence and whatever that evidence may be is discussed only at the hearing rather than other places?

"ANSWER: Yes.

"QUESTION: That would be important to a fair and impartial hearing.

"ANSWER: This is true.

"QUESTION: Now, prior to the hearing on the eligibility of Jones, did you have any communication with Dr. Matthews or

any of his representatives, his athletic director or anybody --

"ANSWER: No.

"QUESTION: -- about the subject matter of this hearing?

"ANSWER: No.

"QUESTION: What about Dr. Poteet or any of his people, did you have any communication with them?

"ANSWER: No.

"QUESTION: Or his athletic director, Mr. Qualls?

"ANSWER: Charlie Qualls.

"QUESTION: You didn't talk to him about it?

"ANSWER: Not that I can recall."

Did I read that correct?

A. Yes.

Q. Do you still feel that it's as important as you did on May 30th, 1985, that considering allegations and other things only at the hearing is important to a fair and impartial hearing? Do you still feel that way?

A. Mr. Boyd, this is true. I've never talked to anybody about what was going on. In other words, that we wanted to disqualify somebody ahead of time or was wanted to do this or do that. Now, that's never been done

in any way.

Q. Today do you feel that it's important to generally be careful to see that considerations of allegations and evidence, whatever that evidence may be, is discussed only at the hearing rather than other places? Do you still feel that's important?

A. Yes, I feel --

Q. You don't think it ought to be discussed other places, do you?

A. This is true.

MR. BOYD: Can I approach the witness on one other part of the deposition, your Honor?

THE COURT: Yes, sir.

Continuing on at the same page, line 21. Excuse me, line 25, page 21. Reading:

"QUESTION: Anybody else that was there that day that voted on Greg Jones, that you had any communications with concerning the subject matter of that hearing?

"ANSWER: No.

"QUESTION: This is because this is the procedure that you are -- that are supposed to be followed?

"ANSWER: Yes."

Q. Did I read that correctly, sir?

A. Yes.

Q. Those are the procedure that have previously been adopted by the committee, correct? Utilized by the members of the committee?

A. I don't know that they were adopted, but I

MR. NOLAN: Excuse me, your Honor.

MR. BOYD: Let me rephrase. I'll withdraw the question.

THE COURT: The question is withdrawn.

Q. These are the procedures by which to your knowledge had been conducted on eligibility issues by this Executive Committee, correct?

MR. NOLAN: Your Honor, I object, he's asking about something that's not in evidence.

MR. BOYD: Your Honor, I just read it.

MR. NOLAN: Please, if I can finish, then I'll have the whole objection.

MR. BOYD: Your Honor, may we approach the bench so that the witness is not --

THE COURT: You may come around here. Is this going to be from the deposition that you had previously read?

MR. BOYD: I don't know if it will be or not.

THE COURT: Bring the deposition so we can be referring to this. One moment.

(Whereupon a discussion was held out of the hearing of the Court Reporter and the Jury.)

THE COURT: We've had a conference so that they're going to state the question slowly. Pay attention to the way it's stated to you. If we have a problem with the way it's stated, we'll rephrase it.

THE WITNESS: Okay.

MR. BOYD: Sorry, coach.

Q. The procedures that we talked about in the deposition of considering only allegations and evidence presented at -- to the body of the meeting where eligibility issues are considered, this had been the way you have conducted business in the past at District 9 AAAAA, is it not, isn't it?

A. Well, so far as I know it's the same. You know, I don't remember all of the --

THE COURT: Counsel, he said so far as I know is

all he has said.

MR. BOYD: Yes, sir.

Q. Do you know of any exceptions to that conduct?

MR. NOLAN: Your Honor, hasn't that just been answered so far as I know. If I knew of any exception --

THE COURT: I don't know, that an indistinct answer, so I think the question is: What do you mean by so far as I know? I think, the Court is interested.

MR. NOLAN: I just thought he answered, I'm sorry, I withdraw my objection.

THE COURT: That's a half answer.

A. Well, let me say this, Mr. Boyd.

Q. Well let me rephrase the question.

A. Well let me answer it this way.

Q. Let me rephrase it because we've had an objection and I think it's kind of been

distorted.

What I want to know is are you aware of any exception in that procedure in the way the committee has handled votes on eligibility in the past on transfer issues, are you aware of any exceptions to that conduct?

A. I'm not aware of any, no.

Q. Okay, that's all I wanted to know.

Q. I would like to take you back to the general time frame of the March 25 meeting. With all due respect, I do accept the fact that you have testified that you do not recall

CROSS OF H. JOHNSON - BY MR. BOYD

Do you recall telling me earlier this year that if Dr. Poteet said that you tried to follow subchapter "h" in eligibility hearings on eligibility of student transfers that you would go along with that if that's what he said? Do you recall tell me that?

A. I don't recall telling you that, but I might have told you that. I'm not saying I didn't because, you know, our meetings --

Q. Did you understand my question?

A. Well --

Q. Do you recall telling me that?

A. No, I really don't.

Q. Okay.

A. But I haven't read the deposition, you know, since I signed it saying that's what I said.

Q. Do you recall me asking you in your deposition generally if you had become aware

of subchapter "h" and its content and you said yes?

A. I really don't remember it but I may have said that.

Q. At this time, Coach, I'm reading from page 18, line 15 of your deposition.

"QUESTION: Have you ever become aware of subchapter "h" or its contents?

"ANSWER: Yes.

"QUESTION: Generally or specifically? I mean have

you ever specifically tried to follow it?

"ANSWER: Generally we probably this year approved a hundred transfers and I don't know of any we didn't approve except this one.

Q. Did I read that correct?

A. That's correct.

Q. All right, sir. And then page 19, line 15:

"QUESTION: The specific question I'm talking about is subchapter "h". There's a long list of things about written notice to the parties and interested people and how evidence and arguments are presented in all of those kinds of things. That's not as important when there is an approval because the parents don't mind then, correct?

"ANSWER: Yes.

"QUESTION: It's really important

when there's a question about a student, wouldn't you say? In other words, that proper procedures are followed?

"ANSWER: Yes. I think, you know, we always want to.

"QUESTION: I mean who's going to object to your procedures if the child plays, nobody, correct?

"ANSWER: This is true.

"QUESTION: Now section 123 reads this way. And that goes into ex parte conversations. Is that correct?

A. I would say it's correct. But, Sam, let me say this, I don't make the procedures, you know, I'm just a voting member.

The Superintendent of schools does that.

Q. Page 77, line 19.

"QUESTION: Dr. Poteet said in his deposition to the effect that the District Executive Committee attempts in contested cases such as this to follow subchapter "h" that governs hearings and appeals. You agreed with that earlier, do you still stand by that?

"ANSWER: I would -- I mean I'm not that familiar with.

"QUESTION: If he says he trys to do that, do you have any reason to question it?

"ANSWER: No, I'd agree with him.

"QUESTION: Section 102 under subchapter "h" reads as follows: In all contested cases all parties including applicants for waiver of eligibility rules and alleged violators of UIL rules must be afforded the

opportunity for evidentiary hearing by appropriate UIL body after reasonable written notice. And then it goes on for some other things.

Did I read that correctly?

A. Yes, sir.

Q. All right, sir. Just generally speaking, Coach Johnson, do you feel, too, that football has some very important life skills to offer young folks?

A. I certainly do.

Q. Do you think it's the most important education that

Q. Other than quarterback controversy, is there anything else that you recall coming up in the way of evidence other than the PAP form of course?

A. Other than somebody had talked to the coach. And it was a quarterback controversy and at one of the two hearings it came up that one of them asked the athletic director or the coach specifically.

Q. Let me ask you this: If you don't know that it occurred, please, sir at the first meeting.

A. I don't know which meeting it occurred, no, sir.

Q. You do not remember anything more specific

than a controversy then, from Coach Qualls presented at the first meeting.

A. That's what I remember, yeah.

Q. And you remember the PAP form which you've utilized in the past to form your decision, correct?

A. Yes.

Q. Any other evidence that you can recall that you based your decision on in casting the majority votes at the March 20 meeting?

A. I remember that it was brought out that there was a controversy.

Q. Any other evidence?

A. And that was the basis of my vote.

Q. You recall when the presentation was made by Highland

different reasons that caused you concern?

A. I was caused more concern over the quarterback controversy.

Q. Didn't you tell me in your deposition that you thought it was highly unusual for somebody giving recitation to the committee to list one reason and then later on list another reason?

MR. NOLAN: Your Honor, I object to this. The basis of my objection is the time and the second one is the reason for it is the relevance and that is, when you are reviewing an administrative body's decision, if there is evidence there from which they could have based a decision, that is what the Court looked at, not their own thought processes, you don't go into the thought processes of why you made this, why you did not. That's the first part.

The second part is that we are not maintaining that which was presented at the March hearing is that which is being relied upon for this determination, but rather that which was presented and is before the Court at the August hearing, so that which was presented to them at the March hearing may have some relevance. The actual facts that were presented, but why they made their decision going into the thought processes of the individuals on this board is totally irrelevant. And in fact is not even subject to discovery as to why they made their decision

Moreover, if it's not subject to discovery, Mr. Nolan should have made an objection earlier because what I'm talking about is reflected in the record and I think we can make this most brief going ahead and reading in it in the record.

MR. NOLAN: At the depositions, I didn't care what Mr. Boyd asked. It was much simpler so he could ask whatever he wanted to. My failure to object when he was taking it was a timely matter. , Evidence before the Court is when it's important.

As to predisposition, I don't have a problem with that, but you do no -- it has also been the case law -- Yick Wo does not speak to that. When they talk about arbitrary and capricious they know that if in a hearing, like August 9 hearings they are presented evidence, not presented any evi-

dence that's arbitrary or capricious, or if there is some other evidence of arbitrary or capricious, but you do not go into their thought proceeses, just like you don't go into the thought processes when they pass the law. The reasons for passing are relevant. Law either stands or falls on its own merits just as th evidence stands or falls on its own merits.

THE COURT: The Court will hear th evidence at this time. Overrule your objection, I am not determining the standard at this point.

Q. Page 111 of the Homer Johnson deposition on May 30th, 1985 at line 15:

CROSS OF H. JOHNSON - BY MR. BOYD

"QUESTION: Are you aware what the family said the reasons were for the move?

"ANSWER: Well, there was two things brought up by the superintendent. One time he stated that they moved for higher academic standards. Number two, at another time he stated that they moved because the older boy was in --

"QUESTION: Dental School?

"ANSWER: -- dental school or medical school. But that was at two different times or two different conversations and two different reasons. And that's another thing that kind of made me question.

"QUESTION: Do you think the move has to be for one reason?

"ANSWER: Well, I think that if I'm the administrative officer from Garland and I'm bringing a transfer to the district com-

that were presented before the meeting was commenced?

A. No.

Q. Do you recall me asking you if Coach Overton came in and refuted what Coach Qualls had said and actually told you that Coach Qualls was in error, that he never talked about a controversy, that there was not problem between the family and the coach, that this controversy thing was blown out of place and out of proportion, if that would affect your answer? Do you recall what your answer was?

A. Yes, I remember telling you that I would have to look the head coach, who I really didn't know his name at that time, eyeball to eyeball, I think I said.

Q. And the superintendent?

A. And the superintendent, or the athletic directors.

Q. And that they would have to prove to you beyond a shadow of a doubt that this move was not for athletic purposes, correct?

A. This is true.

Q. Beyond a shadow of a doubt is not a light burden, is it, to you?

A. What I was trying to say to you was that they would have to prove to me that that was the reason.

Q. Coach Johnson, proving beyond a shadow of a doubt while they're looking you in the eye is not a light burden to you, is it?

Is it?

A. Well, I don't think you understood exactly what I meant. See, you know, we're school administrators and not lawyers. I mean I don't understand a lot of these terms, but what I was trying to tell you was that they were going to have to look me in the eye and tell me that that's the way it was.

Q. And, Coach, if they looked you in the eye and they told you how it was you said you still might not change your vote, didn't you?

A. I said unless they convince me.

Q. Beyond a shadow of a doubt?

A. Unless they proved to me that that's the way it was.

Q. You used the word "beyond a shadow of a doubt".

A. I probably did, that's one of my phrases.

Q. How much shadow is there in a shadow of a doubt proof, is that barely proove (sic)?

A. What I was trying to tell you was that they were going to have to prove to me that that's the way it is.

Q. Coach Johnson, in fact you have never held a student in the district 9 AAAAA who wanted to have eligibility issues approved, a student transfer issue approved, you've never held another on to proving

anything to you beyond a shadow of a doubt, have you, sir? Have you?

A. Yes. The ones that brought to us I was convinced that they moved because they had to move and not for athletic purposes. If I hadn't, I would have voted against them.

Q. Coach Johnson, let me restate the question: No other student in district 9 AAAAA in the last ten years since they've been using this form where the sending schools have approved the transfer, in other instances have you required a student to prove anything to you beyond a shadow of a doubt, have you?

MR. NOLAN: Your Honor, that's the same question.

MR. BOYD: Well, he hsn't answered it.

THE COURT: He has not answered

A. Okay, let me say this.

MR. NOLAN: Excuse me.

MR. BOYD: May we approach the bench?

MR. NOLAN: Can we have that read back? I mean can we have his answer read back?

THE COURT: We'll have the question and the answer both read back.

(Whereupon the question read back.)

THE COURT: He has not answered.

MR. NOLAN: I thought he said yes.

THE COURT: He is not addressing shadow of a doubt, he is saying yes or no. He is not responding to the question. You can read it again, but he is not answering the question. He said because I believe it.

He does not address the phrase "shadow of a dobut" (sic). He's avoiding an answer. So address the question again.

Q. Coach Johnson, maybe I can make this a little shorter and simpler for you. In the past you have always approved PAP forms when they've come in with the sending and receiving school properly executing the PAP form in your district at your executive committee, correct?

A. After we request the people involved, I mean this is not the only time we've ever questioned anybody.

Q. And that's all of the evidence that people generally have to put in is that PAP form properly executed by everybody,

correct?

A. Plus letters from --

Q. Sometimes letters?

A. We require letters.

Q. Okay, you require letters.

A. Yes, sir.

Q. Now, have you ever put any of those people to proving anything beyond a shadow of a doubt, particularly bringing in the principal, the superintendent or the athletic director?

A. We've never brought in those people.

Q. Only Greg Jones, right?

A. Right.

Q. Coach, did you make any contributions at the district Executive Committee in March that were oriented toward asking Coach Overton to reconsider his approval of the PAP

form? Did you recommend one way or another?

A. No.

Q. Who did, who made that?

A. I don't recall. I really don't.

Q. You don't recall who made the motion or --

A. I don't recall anything about that.

Q. Did you know of any reason that Coach Overton's approval should be questioned? Did you know?

A. Nothing other than what was brought at the meeting.

Q. If what Coach Qualls told you at the meeting was not

capable talented young people can participate in and enjoy?

A. Yes.

Q. What do you recall the evidence being presented at the March 20 hearing?

A. That's the first hearing?

Q. Yes.

A. I recall either Dr. Poteet or Coach Qualls, and I remember exactly which one, he's the district chairman and he assigns a lot of duties to Coach Qualls, and I recall him saying that he had, you know, checked with Coach Overton on this matter.

Q. Coach Qualls said that?

A. Said that, and I think Dr. Poteet probably had checked with the athletic director.

Q. Well, if I represented to you Dr. Poteet didn't testify that way, do you have a

CROSS OF H. JOHNSON - BY MR. BOYD

Q. How do you describe the intent that a family has when they want to move? How do you know what the intent of the family is, you personally?

A. Me personally?

Q. Yes, sir, how do you know what that family's intent is?

A. Well, of course I have this -- I make these decisions a lot more than anybody else in our district does because we have a freedom of choice in Garland. And we have people frequently wanting to move from one school to the other. And I studied the situation closely. If I have reason to believe that they're moving for athletic purposes, then I won't approve it.

Q. If you have reason to believe, right?

A. Well, if I have.

Q. It's possible?

A. I should have said proof. You know.

Q. And you told me in about a third of the instances that you're overruled by your superintendent, your own people in your own district, aren't you?

A. Sometimes the superintendent overrules me.

Q. It's important to study closely the actual facts in a case before you make a determination, correct?

A. This is true.

Q. Now, it's safe to say that other than what Coach Qualls told you at the March 20 meeting you never did any

call the man, did you?

A. No, I didn't call him.

Q. That would have been a good source for what he said, did you?

A. Now, since then I've talked to the athletic director.

Q. Did you understand my question about Coach Overton?

A. Yes.

Q. You said you want to get out of here about 3:00. I'm going to try. My question is: Did you ever call up Coach Overton and Coach Overton if he had told Coach Qualls the things that Coach Qualls reported?

A. I never called the coach.

Q. Would that have been an unreasonable thing to do to closely look at the facts?

A. In other words, we voted. The meeting was already over at that time.

Q. Coach, you didn't call the athletic director before that meeting either, did you, the March 20 meeting?

A. I didn't call him either one.

Q. You didn't call either the athletic director or the coach?

A. This is true.

Q. After the meeting you knew Coach Overton what he had said as reported by Coach Qualls affected you, did you then

think it was unreasonable to call Coach Overton and ask him?

A. I didn't think about calling him. I've never called him.

Q. Did you think it would have been unreasonable to call the Jones family then and ask them the reasons?

A. I didn't feel like that was my business.

Q. But you said a minute ago you thought it was important to closely examine the credible evidence, wouldn't you?

A. But I examined the evidence as brought in that meeting.

Q. And your decision was no better than the evidence that came to that meeting, correct?

A. This is true.

Q. And evidence that you took over the

conventional evidence of the mere PAP form, correct?

A. I evaluated everything that happened in the meeting. And that was the way I arrived at my vote.

Q. Normally the PAP form is enough properly completed, correct, normally?

A. I would say sometimes.

Q. Sometimes or normally?

A. I would sometimes because we questioned, and on a good many occasions we send back and say you've (sic) going to have to get a letter from the principal; you're going to have to get a letter from the uncle that they're living with or something

else.

Q. Did anybody make a suggestion that somebody ask Coach Overton to send a letter? Would that have been unreasonable?

A. I don't remember anybody asking that.

Q. That would have been the normal procedure, wouldn't it, to ask for more letters, ask for explanations, wouldn't that have been normal?

A. No, that's not our normal.

Q. Okay, sir. You would agree and represent to the Court that nobody at that meeting so far as you knew knew the Jones family any better than Coach Overton, correct?

A. I wouldn't say --

Q. To your knowledge.

A. To my knowledge.

Q. Coach Overton is the one that had been coaching the boy, correct?

A. This is true.

Q. And he lived over there with the family, correct, in Irving?

A. I suppose.

Q. Coached their boy at their school? Did anybody there say that they even knew the Jones family?

A. Anybody at the meeting?

Q. Yes, sir.

A. Not unless Dr. Power did. I don't recall, you know,

THE COURT: I do permit you to go into rivalries, things of that nature that might bear upon the the instant situation, but the overall picture is another one.

Mr. BOYD: Yes, your Honor.

THE COURT: Certainly, you may continue. I'm not critical, I'm just limiting where we go.

Q. Would you say, Coach, that UIL wrote the rules to insure fair play between the students?

MR. NOLAN: Your Honor, I object, I don't know, one, what rules he means, and two, I don't know if he's in a position to say why the UIL did what they did.

THE COURT: I will sustain your objection. You may lay a predicate for your question, please.

Q. Do you have any reason to believe or let me rephrase it. Do you know whether or not the constitution and contest rules were written for the benefit of students in order to insure fair play?

A. I think they was written for fair play.

Q. Did anyone bring up at the meeting to your recollection that Greg Jones was an honor student, member of the National Honor Society, respected kid?

A. This was brought up at one of the two meetings, I

Q. District 9 AAAAA transactions only. Sometimes, most of the time, almost all of the time a student satisfies your burden of proof, which you call beyond a shadow of a doubt on the basis of documentation only submitted to District 9 AAAAA Executive Committee, correct, on the basis of documentation?

A. Unless there's some question raised as to the transfer, the reasons for the transfer.

Q. And even then, it's still resolved on documentation, letters, whatever else you ask for, correct?

A. This would not be true if we had a quarterback controversy somewhere and somebody moved in, or we had two different reasons stated for a person moving. They would have to call witnesses, if this hap-

ened.

Q. Coach, never before -- never before, nd I think you've said it, never before have ou required a student to go beyond -- a ransfer student to get approved with the roperly complete PAP form, you've never efore required them to go beyond submitting ocumentation for the District Executive ommittee, right?

A. This is true.

Q. Greg Jones' situation he had to ring in witnesses, correct?

A. This is true.

Q. Have you ever told anybody at the istrict 9 AAAAA committee that when you vote ou're voting on the standard of

Q. District 9 AAAAA transactions only. Sometimes, most of the time, almost all of the time a student satisfies your burden of proof, which you call beyond a shadow of a doubt on the basis of documentation only submitted to District 9 AAAAA Executive Committee, correct, on the basis of documentation?

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A. This would not be true if we had a quarterback controversy somewhere and somebody moved in, or we had two different reasons stated for a person moving. They would have to call witnesses, if this hap-

pened.

Q. Coach, never before -- never before, and I think you've said it, never before have you required a student to go beyond -- a transfer student to get approved with the properly complete PAP form, you've never before required them to go beyond submitting documentation for the District Executive Committee, right?

A. This is true.

Q. Greg Jones' situation he had to bring in witnesses, correct?

A. This is true.

Q. Have you ever told anybody at the District 9 AAAAA committee that when you vote you're voting on the standard of

changing your vote? Didn't you tell me that?

A. I told you that they would have to prove to me because I felt like Coach Qualls was an honest man and I'm sure they are.

Q. Beyond a shadow of a doubt, if they came in and said: Coach Qualls was wrong. They, not Coach Qualls, they would have to prove to you beyond a shadow of a doubt that Coach Qualls was wrong, is that right?

A. They would have to prove to me because this is my situation. I've known Coach Qualls for 35 years. I let him pick officials when we play ballgames. That's how much I believe in him. These other people, unfortunately, I don't know that well. If I knew them that well, I'd probably have that much confidence in them, too.

Q. So Coach Qualls' information wasn't good, there may have been an injustice done

here, isn't that fair to say?

A. I would say that, that what Coach Qualls said, if he said anything that wasn't right, it was a mistake because he thought it was correct.

Q. September 5, 1985, just a couple of weeks ago at the District Executive Committee meeting did you vote for Garland on the transfer request, did you vote this last time?

A. September the 5th. I can't - I would imagine I did but I'm not --

Q. Okay, you don't remember?

A. In other words, any time we have somebody like moving from Louisiana to Mesquite, rather than have another meeting, we will say we approve these forms on the condition that they are fully completed. So we don't have to go back over there for another meeting when these forms are completed.

Q. And for the Court's edification, you do require or recall approving the transfer of a Garland student to Highland Park High School who moved into a rental residence in Highland Park, don't you?

A. This is true. I checked this out myself.

Q. You did and it's an intra-District 9 AAAAA move, isn't it?

A. This is true, but let me explain this.

Q. Well, I'm just asking the questions, Coach. It was an intra move in District 9 AAAAA, not even from outside the district, is it?

A. This is so. I approved it. This boy is a real good --

Q. Excuse me. And the boy had family reasons for wanting to move, didn't he?

A. This is true.

Q. And you approved it?

A. I approved it because I thought -- and I hated to loose (sic) him because he was a good football player, but he had a logical reason for moving.

RECROSS OF JOHNSON - BY MR. BOYD

Q. And you talked to the family. You took the time to talk to the family to determine the reasons, didn't you, Coach?

A. I didn't talk to the family. I talked --

Q. Who did you talk to?

A. I talked to the head coach, who knew the boy well.

A. And I also talked to the principal.

Q. The people that knew the boy, right?

A. This is true.

Q. And that's the difference between this situation moving into Highland Park and Greg Jones where you did not talk to the principal and you did not talk to the coach before you voted, correct?

A. Well, this is correct but I've learned a little something from this Greg Jones case. I'm checking all of them a

little closer.

MR. BOYD: Pass the witness.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. In Greg Jones' case, did someone talk to Greg Jones' coach in Irving?

A. Yes, the designated person from our district, which I think was Dr. Poteet or Coach Qualls.

Q. In the one where someone moved from Garland to

CROSS OF COACH OVERTON - BY MR. BOYD

MR. BOYD: At this time, your Honor, we would call Coach Overton.

THE COURT: All right, sir, we'll ask him to come in. Coach Overton.

(Whereupon the witness was sworn.)

RAY OVERTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Just for identification purposes, Coach Overton, please give us your full name.

A. Ray Overton.

Q. And how are you employed at this time, Sir?

A. I am the head football coach at McArthur High School in Irving, Texas.

Q. How long have you been that football coach?

A. I have finished two years, I'm beginning my third season there. I came in January two years ago.

Q. How long have you been a professional in the educational endeavor?

A. I've been a football coach for 39 years.

Q. All right, sir. And you are familiar with the situation surrounding Greg Jones, is that correct?

A. Yes, sir.

Q. And I will ask you to identify page 3 of Plaintiff's

Exhibit 7 the PAP form which purports to have your signature. Is that correct, sir?

A. Yes, sir.

Q. And your signature generally just certifies to the statement above, is that right?

A. Yes, sir.

Q. Did you personally do any investigation to determine whether or not there had been any recruiting involved in connection with Greg Jones or whether you felt there might be any move for an athletic purpose?

A. I visited with Coach Beavers. In fact, Coach Beavers called me when Greg talked to him about moving over. And Coach Beavers is a good friend of mine and we talked at length about the situation and he gold me then, he says: Coach, if there's any problem, says I won't let the young man play

at Highland Park. And I said I know of none.

Q. For your information, the Court has had read in or read to him the transcript of the testimony that you gave at the August 9 hearing. Do you recall testifying there under oath?

A. That was in Mesquite.

Q. Yes, sir.

A. Yes, sir.

Q. And since that time have you had any reason to reconsider any of the statements you made at that time?

A. No, sir.

A. And for brevity somewhat, would you tell the coach, excuse me, the Judge, whether or not you would adopt the statements that you made then today as well?

A. Why, yes, yes, I would sign the paper again today.

Q. And the statements you made there were true and correct of your own knowledge?

A. Yes, sir.

Q. For the record, Coach, did you tell, prior to the March 20, 1985 meeting, did you tell Coach Qualls that Mr. Jones had been complaining because you had not give his son a fair chance to play?

A. No, sir.

Q. Even words to that effect?

A. The nearest thing that I could say in that -- he had called me, I don't know, a number of times about Greg. And I told him

about his mother and his father coming both to see me and telline me why they were moving.

Q. Excuse me. He calling, you mean Coach Qualls?

A. Coach Qualls called me and he was asking about it and the first time I told him exactly what they had told me. And then later he had said that some people from Irving had talked to him and said that there was a controversy between me and Greg or me and the Joneses. And I told him at that time that I knew of nothing. That -- Well, let me just tell you the whole thing.

In the -- in the beginning of this thing, the parent

had both confronted me and told me why they were moving and I had not reason to question that.

And when Coach Qualls asked about this controversy and asked if there was a controversy between he and I, and I said none that I know of. I said the Joneses -- I talked to them one time about their son in this football season.

We have an open house and in the first week of our ball practice, and at that time we show all of the parents what we do in the off season as well as that and let them watch practice. We uses to do it, but we can't because it's not in school days. And that night Ms. Jones asked me, said: Coach are all of the quarterbacks going to have an equal opportunity to make the team? And I told her that we had the three young men,

they were all very close, and that we were going to try to get each of them the same number of attempts with the first team, the second time, and the third team.

And it goes back to Coach Mosher, when I worked for him he told me that you can always pick your number one quarterback if he can take the second or the third team and move it against the first group. So we always go through that procedure. And we did, and I had my backfield coach who worked with the three quarterbacks record every snap.

At the time we played Highland Park our first game, each quarterback had had within one snap of exactly the same as every other one, and this was the only that either Mr.

Jones or Ms. Jones or Greg said anything to me about football or anything else.

Now, at booster clubs, I would see either Mr. Jones or Mrs. Jones, usually Mrs. Jones, I don't remember Mr. Jones being there very much, but I don't think, could have been, but we might speak and sometimes we didn't. She would be at the back and I would be at the front talking. But never one time did anyone say anything about me playing their son or why I didn't play him or anything else.

I'm sure that the Joneses and the Halls and the Hands all thought their won was number one. I wouldn't think much of them if they didn't. But --

Q. No, in connection with you coaching experience, are you aware of instances in which parents have tried to apply pressure to

you in order to get their kid to play more?

A. Oh, I've had that a lot. And it usually works in reverse.

Q. Now, then, are you telling -- would you describe for the Court how you would compare those kind of parents with the way the Joneses behaved?

A. Well, of course there' no comparison. In other words, I'm sure that, like I said, I'm sure that the Joneses felt like Greg was number one. I can accept that, but they never said one thing to me or as to my knowledge, not to any of the other coaches, none of our coaches every mentioned it. And

CROSS OF COACH OVERTON - BY MR. BOYD

I --

Q. Could you tell how you got along with Greg himself in school, did you have any problems with Greg?

A. No, sir, I teach chemistry and Greg was in my chemistry class, excellent student, National Honor Society student.

To my knowledge, Greg has never had a minute's problem with any teacher, any coach anywhere. He's a super young man and we hated to loose (sic) him. I would like not to have signed the letter because I would like to have kept him, but I saw no reason not to if this was for their family's benefit.

Q. So, if I understand you correctly, by way of your explanation, you did not tell him that you and the Dad were cross with one another over playing time?

A. No, I told him, I said that Charlie, between you and I, I said the Dads may hate my guts, but they've never said a word. And somebody else from the school district called Coach Lytal, our athletic director, and asked him to investigate because they thought this.

And he called a number of parents. I didn't investigate it, but he did, and he called a number of parents and people that were at all of our games, and he could find nothing to indicate this.

And like I said, as far as our relationship, me and the Joneses, I always thought everything went fine. I know they

CROSS OF COACH OVERTON - BY MR. BOYD

MR. NOLAN: Your Honor, I object, this is a leading question. This is is own witness, and I wish that he would ask what he told Coach Qualls instead of --

THE COURT: Sustain your objection, this is a leading question.

Q. Okay. Did you even speak about with Coach Qualls about the competition, if any, that had existed between Shawn Hall and Greg Jones?

MR. NOLAN: Your Honor, that is also a leading question.

THE COURT: Overruled, counsel, he can identify as to a person.

MR. NOLAN: But he's saying did you even speak about this, which calls for yes or no as opposed to asking what, if any, doesn't take it out of it.

THE COURT: Sustained. Make it

in any matters. You can identify a person as to competition, as to Shawn Hall.

Q. Did you speak with Coach Qualls about any relationship between Greg Jones or Shawn Hall

A. Yes, I did.

Q. And what did you tell him?

A. Of course, let me -- let me say this from my standpoint. Any competition between Greg and Shawn occurred before I came to Irving, so, here again, this is hearsay. They -- some of the coaches that were on the staff, when I came

to McArthur said that the two boys had competed against each other in junior high. I later found out that then Shawn had moved to California and was not there his freshman year. When he came back as a sophomore Shawn Hall played defensive and Greg played quarterback and was the starting quarterback in all ten of our junior varsity football games as sophomore. Then as a junior, we had both of them and they competed against each other then. And this was the competition that they had.

A. If I understand you then, the only competition you described was the Junior year, that's the only that you had any knowledge about?

Q. That's the only one that I had any knowledge of.

Q. And isn't it true that in the

Sophomore year that Shawn Hall actually played defense for the varsity team, a total separate team from Junior Varsity?

A. Shawn was our number five back. When we went to our nickel defense he came in. He was not a regular, but he played there. And Greg was the starting quarterback on our Junior Varsity team.

Q. Are those two separate teams?

A. Yes, sir.

Q. Separate schedules?

A. Separate schedules. Same coaches work with them, but they're separate schedules.

Q. And the boys are playing different positions?

A. Yes, sir.

Q. And then when you said in the freshman year, would that be 9th grade to those of us that went through that generation?

A. Yes, sir, that's our Freshman year, and I came there and of course this is the thing, I came at the middle of their Freshman year. Shawn Hall was not in McArthur and Greg was not in the football program, he was playing basketball.

Q. So in the 9th grade, as far as you know, from what ever sources, can you tell us whether or not you're aware of any competition at all in the 9th grade?

A. None.

Q. And finally do you recall speaking with Coach Qualls about any bad feelings between you and the Jones family?

A. No, other than what I said. I said

that they may -- they may not like me at all because their son didn't play. I'm sure that the Halls felt the same way because I know they thought their son was the number and like I say we were playing Bryan Hands. He had started for us the year before and had played 10, well, 11 ballgames for us and he was our starting quarterback through that season.

Q. Could you tell the Court very briefly how Greg got in your football program?

A. Greg was, like I say, when I went to McArthur, Greg was in basketball. And some of the coaches had told me that he

had played football before. Greg had an older brother --

MR. NOLAN: Excuse me, your Honor, this, I don't object to this, except it's already been read in laboriously. This is exactly what he testified to in the hearing.

MR. BOYD: We'll stipulate. He's already said he adopted his earlier testimony at that August 9 hearing, so counsel is saying he would.

MR. NOLAN: Sure, I don't have any problem with that, I just don't want to listen to that all over again.

MR. BOYD: Counsel said he would stipulate to it.

THE COURT: I take the statement you don't want to listen to it only for the basis that it's repetitive. I understand

that. So we already have that testimony that was given at the other hearing, we've read it in our hearing, so if he went over it again now, you have adopted what you said you recall from that situation, so we will not go into it under the circumstances.

Mr. BOYD: Very good. Very good.

THE COURT: Unless it comes up as an incident or event.

Q. Coach Overton, how long have you known Coach Qualls?

A. Oh, quite a while, when I was President of the Coaches Association he was on the Board of Directors, and that was in 1975. So I've known him since that time.

Q. When you say President of the Coaches Association,

nothing else came up. Now, after that time Justin moved to Louisiana and now he's back at McArthur. I mean he's made a circle, but I really, I don't have any knowledge of exactly what happened.

THE COURT: Counsel, can you remember where you are now? I want to ask him.

You said earlier, you have said two things. One, you have said that someone called to the athletic director at McArthur. I don't know when, but sometime recently and caused an inquiry to be pursued about, I assume about Greg Jones and someone else. Can you just expand on what that was?

THE WITNESS: I'll do the best I can. Now, our athletic director told me after he had called some of the parents. Now, this was before the first meeting.

THE COURT: Give us about a time, when would that have been, if you remember?

THE WITNESS: Sir, I can't tell you exactly. It was just before this was to go to a vote, as I understand, on whether they would accept Greg or not.

THE COURT: This would be back in March at that time, somewhere in that vicinity?

THE WITNESS: Mr. Lytal could tell you the exact time. He didn't tell me, to be real honest, he didn't let me know until after he had made the investigation and everything else, then he told me that he had been asked to do that and that

he -- had made some phone calls.

THE COURT: What had he been asked to do?

THE WITNESS: To check and see if -- that he thought that the Joneses were moving for athletic reasons.

THE COURT: All right, someone anonymously called and asked that that be done?

THE WITNESS: I don't know if it was an anonymous call, it was just a call. He didn't tell me who called him. I think it was someone with one of the school systems there.

THE COURT: All right, someone from the school system. Then what happened when that call came in?

THE WITNESS: Well, Like I said, he --

THE COURT: He did it before you knew about it?

THE WITNESS: He checked with some of the parents to see if they had heard anything or they knew anything of why the Jones might move for athletic reasons.

THE COURT: Yes, sir.

THE WITNESS: And he told me that he found to indicate that we had made a mistake by signing the letter.

THE COURT: Now, you also said the time that you have been there for nearly a part of three seasons, you said.

THE WITNESS: This is my third season.

THE COURT: You have stated that some of the coaches have spoken of what would it be, a controversy or

competition, between Shawn and Greg?

THE WITNESS: Well, to my --

THE COURT: That you know of in matters that have been called to your attention?

THE WITNESS: The talked about the competition.

THE COURT: Who are they?

THE WITNESS: The coaches that are on the staff there that are not with us any more, they talked about that the young men had competed for positions and that, well, I'll just tell you exactly what they said. They said that Shawn had beaten Greg out. And I don't know, I didn't know this until the Mesquite meeting and Mr. Jones said then that we have a -- that at that time the Junior High's have a white and an orange team and that one played on the white team; one

played on the orange.

THE COURT: This was to be Junior High. It has nothing to do with McArthur.

THE WITNESS: No, sir, this was in the eighth grade at Travis Junior High School.

THE COURT: All right. Anything else then about that inquiry or rather those remarks from the subcoaches, we'll call them? But the competition that you heard there was a Junior High competition?

THE WITNESS: Yes, sir.

THE COURT: And all of the competition that you have discussed between Shawn and Greg has been that which you

nave had personal knowledge while you have been there as head coach at McArthur?

THE WITNESS: Yes, sir. And that's all I can testify to.

THE COURT: All right, back to you.

Q. If the record reveals that Coach Qualls confirmed in his testimony here that you allegedly told him, number one, that the daddy was complaining because you didn't give the son a fair chance; complaining to you that he was going to take his son to Highland Park where he could get a better chance to play. Number three --

THE COURT: All right, break it into parts, just leave it at the first one.

Q. Okay on number one, if he said in the evidence that the daddy was taking the boy to Highland Park so that he could get a

more fair chance to play and if Coach Qualls was saying this is what was related to you by Mr. Jones, can you tell us whether or not that would be a true statement?

A. Mr. Jones never mentioned Highland Park other than the travel, to avoid the travel. Like I said, there was nothing said about Greg playing or not playing. Now, like I said, and I told Charlie, I said: They may not like me at all because I didn't play him more.

I can understand that. But they never said anything to me about it.

be. We would like for them to compete. But the statement is made about first and second and third team. We really didn't -- didn't feel that way. If we were starting Bryan Hands, if we needed to pass we used Greg. If we needed to run we used Shawn. I don't know that one was second team or one was third team.

MR. BOYD: We have no further questions, Coach, I know you're a busy man, we appreciate it.

THE COURT: Mr. Nolan.

MR. NOLAN: No further questions.

THE COURT: You will still be around in town the next two days, won't you, hopefully at other things?

THE WITNESS: I hope so, if they don't fire me.

THE COURT: WE all have that risk. Mine comes up when we get elected. They can fire me, too.

THE WITNESS: Mine goes from week to week.

THE COURT: You are excused, sir

(Whereupon a recess was held.)

STEVE JONES

having been fully sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Steve, would you give yuour full name, please?

A. Stephen Craig Jones.

Q. Where do you reside?

A. 3856 Potomac, Dallas.

DIRECT OF STEVE JONES - BY MR. BOYD

Q. Are you the brother of Greg Jones?

A. Yes, sir.

Q. And how are you fully employed at this time, what do you do?

A. I'm a dental student at Baylor College of Denistry (sic).

Q. And how long have you been a dental student?

A. Since the fall of 1983.

Q. Could you tell us since you began your dental school, have you run into any kind of problems just in general with the school?

A. With the schools, no, sir.

Q. How about your living circumstances?

A. Yes, sir.

Q. Would you recite those kind of problems and what resolutions you arrived at for the Court.

A. Yes, basically the first year was all classroom work.

Q. What year was that?

A. That was '83- '84 school year. This past year, '84-'85 saw a change in schedule. I had lecture courses as well as laboratory courses and by about mid September of 1984 I saw it was apparent that something was going to have to be done. I was going to have to move closed in to school or something because I was doing too much traveling back and forth. I would have lectures in the morning, laboratory course sometimes in the afternoon. I would be going home and have to come back.

Q. Just traveling problems?

A. Yeah.

Q. Now, did you have any other responsibilities at the school?

A. Yes, sir, I'm the president of my class.

Q. Does that take any time up?

A. Yes, sir.

Q. Did that impact on your schedule in the fall of 1984?

A. Yes, sir.

Q. Could you tell us how you resolved the traveling problems or the time problems being a full time dental student in the fall?

A. In the fall before the move what I did was usually ride back and forth to school with my dad and he would bring me back to school at night and I would bring a change of clothes, load up whoever I could find, sleep

on the coach (sic), to go school the next morning. Repeat the thing the next afternoon.

Q. Was that generally what you did?

A. That happened at least three nights a week.

Q. So you're telling the Court you didn't even know where you would be sleeping three nights a week generally?

A. Yes, sir.

Q. What kind of problem did this cause for you personally?

A. Just I felt like I had never really got rested until

the weekend because I felt I was always on the go and didn't really know where I was going to be at what time, which night.

Q. Did you register any of these problems with your parents?

A. Yes.

Q. What did you tell them?

A. I would say it was probably to late September I approached my parents and said that I was going to have to take out a loan if they couldn't do something and put me up in an apartment or somewhere close into school, because I couldn't do that driving all year.

Q. Could you tell us what, if any, connection you had to the move as far as you know? I mean were you involved in that in any particular extent?

A. All I know is I went to my parents

and told them I needed to move and, you know, and they said: Well, we'll talk about it and work it out and see what happens. And then the next I knew, you know, they came to me with the solution, and it was the perfect solution, because I couldn't have gotten any closer to school in an apartment.

Q. In connection with Greg's athletic teams and so on, could you tell the Court over the last couple of years what connection you've had with Greg's athletic career?

A. My connection -- I think I've attended one or two ballgames each year he's been in high school, but with my

schedule, I haven't had time to really keep up with him in his athletics.

Q. Will you tell the Court whether or not you encourgage (sic) your mom and dad to resolve your locational problems in order to help Greg's athletic career?

A. No, that wasn't a consideration at all.

MR. BOYD: Pass the witness.

CROSS-EXAMINATION

BY MR. NOLAN

Q. Steve, where did you go to undergraduate school?

A. Baylor.

Q. In Waco?

A. Uh-huh.

Q. And I wanted to get my time frame right. When you're talking about approaching your parents in mid September, that's 1984?

A. '84

Q. And that's where your -- a change in schedule from just classrooms to classroom and lab?

A. To laboratory change, yes.

MR. NOLAN: I have no further questions.

THE COURT: Anything else, Mr. Boyd?

MR. BOYD: I don't think we have any, your Honor, at this time.

THE COURT: Mr. Jones, you are excused, please.

received a call.

Q. In connection with deciding whether or not a young person should be allowed to transfer and participate in UIL activities, do you feel that that's an important decision for the District Executive Committee?

A. Extremely important.

Q. Do you thing that only credible evidence should support the decision of the committee?

A. I do.

Q. Is that important to insure fairness to the individual and the system?

A. I do, yes.

Q. Prior to the meeting, what was your experience with considering the transfer requests of students between districts?

A. I had participated, of course, this was my first year as superintendent, so my

first year on the UIL committee. It was my first experience.

Q. Have you been involved previously as well?

A. No, this is my first year, but we have had some other transfers before that meeting.

Q. All right, sir. Could you tell us at the hearing if you registered any concerns about statements made or hearsay statements made when the speaker was not present, particularily (sic) Coach Overton?

A. Yes, I was concerned about -- first of all I was

that Coach Qualls talked about?

A. I don't think it would have been unreasonable.

Q. It would have helped, wouldn't it?

A. In all probabilities, we would have gotten more insight.

Q. Did anyone suggest that someone call Coach Overton or the Joneses and ask them to come and be allowed to make statements?

A. As I recall, there was a suggestion that Coach Overton be called on the telephone.

Q. Do you know any reason why that wasn't done?

A. Not really in the -- in the intervening process, discussion kept moving and we decided not to call. I think it was kind after joint decision that we would take the document we had in front of us and work with

that.

Q. As you sit here today would it have been probably a little better in order to valuate what Coach Qualls said to call Coach Overton and get his input at the time?

A. I think so.

Q. Other students that you have considered for transfer at District 9 AAAAA Executive Committee meetings have generally just submitted complete paper work, is that correct?

A. Yes.

Q. And that the routine, isn't it?

A. Yes.

Q. And no other student has had a burden of having to have an evidentiary hearing or present witnesses, have they?

A. Not since I've participated in it, the process.

Q. You believe all students ought to be treated alike?

A. I do.

Q. Coach, how would you describe District 9 AAAAA the football rivalry, is it just a dead relationship between the different teams or would you say it's fairly intense?

A. Extremely intent. I would say when it is so very important to all of us, I would not exclude myself. I want to win. I like to win.

Q. Do your citizens in your district expect you to try to produce a winner?

A. Very much so. We're football conscious.

Q. Would you say that it's extremely enthusiastic crowd?

A. Very much so.

Q. Is the -- generally speaking, do you find, although maybe healthy, do you find the competition with Highland Park to be very keen and very intense?

A. Well, Wilmer Hutchins and Highland Park is most intent than any other school within the district because last year the first year we beat them and they had been beating up on us very good.

Q. The community was pretty proud of that, weren't they.

A. Yes.

Q. In your estimation, it wouldn't exactly be correct then to say there's not much of a rivalry in this district?

A. I think there's quite a rivalry, I think there's quite a rivalry.

Q. In all fairness, Doctor, if Greg's PAP form had been a request for him to participant as a shotputter, or a long distance runner, do you think it, do you, with your educational perspective, do you think that it would have gotten the same attention it got?

A. No, I don't think so.

Q. In fact, isn't it fair to state that in fact the kid was allegedly going to play quarterback and maybe at Highland Park, didn't that probably have something to do with the feelings there in your estimation?

A. I would think it had something certainly to do certainly in my estimation that

football and basketball are the primary sports. We're pretty keen on that. The secondary sports are important, but not as important.

Q. If his application had been for a minor sport probably not even raised an eyebrow, would it?

A. I don't think so, not in my estimation.

THE COURT: Counsel, was Dr. Matthews participant in the August 1980? That will come later, won't it?

MR. BOYD: Yes, your Honor.

THE COURT: That's fine.

will see. You may ask him. You may relate he has had a prior deposition taken.

Q. Okay. Is it also true, Dr. Matthews, at that time in your deposition I asked you if you were aware of any subsequent investigation done by Dr. Poteet after the vote and you responded you were not aware of any such thing, correct?

A. I was not.

Q. Had you asked Dr. Poteet to do any investigation or other.

A. No. No.

Q. Totally unaware of anything he might have done, correct.

A. Right.

Q. And as you sit here today, you're still unaware of anything he might have done, correct?

A. That's correct.

Q. Dr. Matthews, to a great extent your decision on that day of March 20th of 1985 to vote against the eligibility of Greg Jones was based a great deal on supposition rather than hard facts, wasn't it?

A. Yes, it was.

Q. And don't you believe it's a little more fair to base a child's eligibility to participate in enriching activities on hard facts rather than supposition?

A. I do.

Q. Do you also feel it's proper for the District Executive Committee to give impartial consideration to a student's request?

A. Yes, I do.

Q. Free from prejudice or bias from other things that have happened but make decisions on good credible evidence?

A. Based on the facts presented.

Q. Do you remember telling me that Homer Johnson made a remark that he always votes against transfers at the meeting?

A. He made that remark as a philosophy, I think.

Q. And his philosophy that he espoused, didn't that suggest to you that maybe he wasn't coming to the meeting unbiased, just a little predisposed?

A. I felt it was typical athletic director's comments to be totally honest with

you. I felt that he had a strong philosophy about it, a strong feeling that way.

Q. You didn't think he came there impartial though in his views towards transfers, did you, if he said he always voted against them.?

A. My feeling was that it would have to be something really strong to convince him not to vote against it. I felt that the evidence would have to be overriding, you know, that kind of statement would lead you to believe that. I would be rather difficult.

Q. If it was your child being considered, you would want

your child considered based on what was said at the meeting and not on bias or prejudice from other sources of information, correct?

A. That is true.

Q. And that is the fair way to do it, isn't it?

A. Yes, it is.

Q. For the reocrd, and I think it's already been stated, Garland had four votes in that March 20, 1985 meeting and that was the majority, wasn't it?

A. Yes.

Q. I mean whatever Garland did at that meeting carried the whole weight because there were only three other voting parties, correct?

A. Correct.

Q. And Garland was represented by Coach Homer Johnson, correct?

A. Correct.

Q. Dr. Matthews, in your normal evaluation of PAP application, the previous athletic participating form, do you think it is more recommended and more professional to rely on that form rather than hearsay or anonymous sources or tips?

A. I think realization should be on the form presented before.

Q. Yes. That way everybody is treated the same, correct?

A. Correct.

Q. And that's important in giving out impartial justice, isn't it?

A. Yes.

Q. Did you think at the time of the March 20th, 1985 meeting that it would have been good since there was some questions for the family to have been invited there so they could have given you some statements?

A. Yes, I do.

Q. There was no reason the family couldn't have been invited, was there?

A. Not that I could see.

Q. Okay. And it would have been helpful since there was some questions going in the meeting apparently by some people to have Coach Overton there, too, wouldn't that have been helpful?

A. Very helpful.

Q. Especially if you're not going to go

by the PAP form, correct?

A. Correct.

Q. Is it fair to state that school activities, eligibility for transfers and other matters, that you believe that due process should be accorded in District 9 AAAAA to students who want to get the privilege to participate in UIL activities?

A. Yes, I do.

Q. And that's an important part of school administration

to see that the people have notice and the opportunity to be heard when their interests are at stake, correct?

A. Correct.

Q. Is that how you run your school system, sir?

A. Try to.

Q. Yes, sir. And that's how you try to conduct your activities at the District Executive Committee as well, is that correct?

A. That's correct.

Q. As far as you are concerned, the vote that was taken on March 20, 1985, if that had approved the eligibility of Gregory Jones, that would have been it, correct?

A. Correct.

Q. And it didn't approve the eligibility of Gregory Jones, but you considered that a final vote, did you not?

A. Yes.

Q. Do you remember, Dr. Matthews, some discussions about trying to get Coach Overton to change his signature, his approval?

A. I don't know so much to get him to change it, but to get a clarification of just why did he sign it if he had certain reservations.

Q. If he said all of the things that Coach Qualls said that he said?

A. Yes.

Q. Why would the man sign the statement, correct?

A. That's correct.

Q. That's pretty hard to understand if he actually said all of the things that Coach Qualls said, isn't it?

A. That's true, but rather difficult to understand. If he had those reservations, why did he sign it?

Q. Correct.

A. And I made the that statement in the meeting also that I had concerns.

Q. Did anybody at the meeting to your knowledge have first hand knowledge of anything, or was this -- all of this evidence that was presented on March 20th basically hearsay statements of what other people had told them and so on.

A. The athletic -- Coach Qualls seemed

to have had the most information that was shared and perhaps was the key factor and decision.

Q. Do you recall Coach Qualls telling you that there was a big quarterback controversy over in Irving, words to that effect?

A. In effect he said that there had been difficulty with the young man in terms of the young man being demoted and consequently a problem, disagreement with the father.

Q. Between the coach and the family?

A. And the father, yes.

Q. There were hard feeling there?

A. Yes.

Q. And if that isn't true, that would trouble you, wouldn't it?

A. Very much so.

MR. BOYD: We pass the witness, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. NOLAN:

Q. Doctor Matthews, that discussion on what Coach Overton signed the statement, you said you had a concern about why he had signed that statement. I mean why he had signed it?

A. Yes, I had a concern that why did he sign it if he felt that way that he felt.

Q. And somebody was going to check that out, was that what was talked about?

A. To the best of my knowledge, best of

my memory at least, if I'm not mistaken, that Qualls was going to get back with him, Coach Qualls or something to that nature.

Q. Do you know if Coach Qualls ever did that?

A. No, I did not. When we decided to go ahead and vote, I think that kind of nullified a lot of that effort.

Q. Do you recall anything at the meeting then which asked Coach Qualls to check with Coach Overton after the meeting about his statement?

A. No, I don't, because I left early and I had cast might

READING FROM THE DEPO OF DR. POTEET

ANSWER: I think it would be impossible for us to conduct our business, right.

"QUESTION: And you don't believe that you could conduct that business at any other time?

"ANSWER: No. What I am saying is, I don't think we could have 30 different actions that we're going to take and invite 30 different parents and such and say: Come see how we're going to vote. I don't think we could conduct our business, no.

"QUESTION: Now, then, since you usually and in the last ten years have only denied one request, it normally wouldn't be a problem, would it?

"ANSWER: Right.

MR. BOYD: Your Honor, at this time, we would like to call Mr. Hobart Lytal.

(Whereupon the witness was sworn.)

HOBART LYTAL

having been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Mr. Lytal, will you give us your full name?

A. Hobart Wade Lytal.

Q. How do you spell your first name?

A. H-o-b-a-r-t.

Q. And your last name?

F

A. L-y-t-a-l.

Q. And are you employed, sir?

A. Yes, sir.

Q. And what is the nature of your employment?

A. The Athletic Director for the Irving Public Schools.

Q. All right. And how long have you been involved in high school athletics, Mr. Lytal?

A. 29 years.

Q. In sort of a brief fashion I would like to take you to the Gregory Jones situation. Are you familiar with the young man I'm mentioning?

A. Yes, sir.

Q. In that connection, could you tell us on or before March 20th, 1985, that would

be the first meeting, okay, where there was a vote taken and Greg's eligibility was denied, before that time could you tell us generally what the situation was in Irving, Texas as far as Greg Jones was concerned, and as far as you knew, you actually knew?

A. Policy in Irving on transfer policy, it originates at the high school. The parents of the transferring student pick up a transfer form, take it, fill it out, and return it to the coach. The coach in turn signs or refuses to sign and it comes to the Athletic Director's office. In the past years, an assistant superintendent has been designated by the superintendent to sign the transfer form. It comes to my office

and I take the form. If there are no problems, to the assistant superintendent, who in turn signs it upon my recommendation. And that was done.

Q. All right, sir. And that was done also in Greg Jones' case?

A. Yes, sir.

Q. At this time I will show you what's been marked Plaintiff's Exhibit 9 and ask if this is a copy of the PAP form that you can recall, if you can recall it that relates to Greg Jones' request for eligibility at his new school?

A. Yes, sir.

Q. Who is Mr. Cecil Green?

A. Cecil Green is the Assistant Superintendent for Instructions at Irving public schools.

Q. All right, sir. When the officials

in Irving approved the eligibility transfer and the family had signed their statement, at that time will you tell the Court how you felt about the probability of the transfer going through?

A. Well, it was handled just as any other transfer student in Irving, and I at that time names do not appear to me at all. I don't think that I even noticed Greg Jones, and I did not know Greg Jones, and I usually do not unless the coach notifies me that he feels like there's been tampering or there's something wrong. I simply take it only to the assistant superintendent for signature.

Q. Okay.

A. And that was the way this occurred. IF was probabl done with a number of other transfers.

Q. Now, irrespective of your specific recollection before the March 20 meeting, of Greg Jones' situation, could you tell the Court whether or not a previous athletic participation form, since those forms have been used, which has been approved by you as the sending school, has one of those ever been rejected before this situation?

A. No, sir.

Q. Highly unusual, isn't it for one to be rejected?

A. I can only speak for myself. It is unusual from my standpoint in the three years it's been -- yes, I don't know state wide.

Q. Is it true that in fact you were so

concerned about the rejection of the approval --

MR. NOLAN: Excuse me, your Honor, I believe he's leading the witness.

THE COURT: Sustain your objection as to leading. The question is stricken, you will disregard it.

Q. Could you tell us whether or not you made any contact with the University Interscholastic League over the rejection of the PAP form that was executed by the Irving officials? Did you make any telephone calls down there?

A. Yes, I called the University Interscholastic League

concerning this.

Q. Concerning the rejection of this?

A. Not concerning the rule, no, sir.

Q. Have you called them about the fact that the -- anything in regard to the approval of the Irving officials being rejected by the District 9 AAAAA committee?

A. I called the -- I called Mr. Bill Forney, yes, sir, after the hearing in Mesquite, Texas because I felt like at that time, and I was in attendance, that I felt like that our -- the football coach at McArthur High School and the questioning and so forth and so on, that I felt like that in some way that his professionalism had been questioned and we are a co-worker and I didn't like that at all and I don't like it now.

Q. All right, sir.

MR. NOLAN: Just for point of clarification, was that after the March hearing or the August hearing?

A. THat's after the hearing. I don't have a date, but it's after the hearing at Mesquite administration building over where Mr. Overton was called to the stand, and I was in participation , yes. I was unhappy, but I did not call and I want this in the record, about a rule. I called simply from a standpoint that I was dissatisfied in the way he was questioned and his professionalism, I felt personally was questioned, and I don't like that about an Irving employee period.

Q. What do you know about Coach Overton that would have

led you to be upset by the way he was treated? What do you know about him? I mean why were you upset that he was being questioned?

A. Well, certainly I respect Coach Overton as a coach or he wouldn't be employed by the Irving School District and I respect his professionalism and his integrity, yes, sir.

Q. All right. Sometime after the March 20, 1985 meeting at which Greg Jones' eligibility was denied by the District 9 AAAAA Executive Committee a call was made to you by someone from District 9 AAAAA, is that correct?

A. I received a call from Bo Snowden at Highland Park was my first notification that there was a problem and he -- well, I'll answer that: Yes, I did receive a call.

Q. And what was the nature of the call from Mr. Snowden?

A. Bo Snowden asked me to investigate the situation. He informed me that the District Executive Committee had denied approval and asked me to investigate if I felt like that there were any problems as far as recruitment or with moving for athletic purposes.

Q. Okay.

A. And I told him I would do so.

Q. Did anybody else from 9 AAAAA call you in regard to investigating that?

A. No, sir.

Q. How about Dr. Poteet? Did he make a call to you?

A. No, sir.

Q. In the spring of 1985 were you the athletic director at the Irving Independent School District?

A. I'm sorry.

Q. Were you the athletic director this last spring and summer?

A. Yes, sir.

Q. Did you conduct an investigation of whether or not there could possibly have been any recruiting or a move for athletic purposes by the Jones family?

A. Yes, sir.

Q. Would you please tell the Court first hand what you found.

THE COURT: What he's asking is facts rather than conclusions.

A. Correct.

When Bo called me, Bo Snowden,

called me to make the investigation, I thought because it was the first time that it had been brought to my attention, and when I did I thought first of all, you know, our district owes a responsibility to do so. So my first indication was to call Mr. Overton to the office and we visited about the circumstances of the case and I asked him at that time if he had any doubts of any kind about whether or not he should have signed or anything had changed during that period of time. He informed me at that time, no, he had not,

that he would sign it today just as he signed it then.

I asked him some facts about the case about or about Greg Jones, about what had occurred, you know, and I'm not totally unaware of McArthur football teams, because I saw them play on five occasions or six occasions during the course of the year, and I do know who is starting quarterback and who's not starting quarterbacks, but I did not know all of the circumstances which I did make myself familiar.

I also called an individual in the community who I felt like had seen every McArthur game and asked him if he had any indication or had heard of any situation that where Mr. Jones or anybody in that family had said that they would move for athletic purposes; that they would move because they

weren't satisfied with the program or anything of this nature. And I will not say who that individual is. I called him in confidence. I asked him to find out in any form or fashion if that had occurred and get back to me and I would contact the people who had heard such statements. He called me back and said: No, he had no information to give me at all about any statements that had been made in the stands or anything of this nature.

The next was to call Mr. Jones who I wanted to talk to at that time in which we visited for some two hours or in that neighborhood. I asked him some questions that I wanted to, you know, to know from him why he had moved. I asked him where he

moved. I asked him and what indication, you know, for what purpose that all of a sudden that it came up in the middle of the year. And we visited for some two hours at that time.

Now, after having conversations with Mr. Jones, I never at any time, and I think I need to make this - investigated or needed -- I felt needed to investigate a recruitment violation. That was never indicated at all because I had no indication and do not to this day that this youngster was tampered with to come to Highland Park by the coaches or anybody in that administration over there. So I dealt strictly from a standpoint that moving for athletic purposes.

And when he told me that he had moved, that he still had a house in Irving, that it was to be leased, you know, your

irst thoughts in that manner is that yes, hat in one indication of a rule that needs o be protected by the University nterscholastic League very strongly, that eople do not jump from place to place just or athletic purposes, and so I thought about hat end of.

I asked him some questions to the tandpoint that if -- why had Greg Jones quit s a freshman? I wanted to know why he had uit the. And then when he went back in to laying football, was he dissatisfied with he program at McArthur High School or was e dissatisfied with Mr. Overton or were here reasons for that? In which he indi-ated to me there were no.

Now, after thinking about it, and ooking at it from a

standpoint, I had certainly some feelings about still having a house in Irving and moving to another place, because I had been in this business a long time. But I also had a strong opinion when I went back to Mr. Overton to talk was the question is if football had been a priority, why would he have not moved as a Freshman when he quit, if he had a problem, if football had been that priority, why all of a sudden did it come?

That was the thing that I weighed in my mind. Was it -- it didn't seem like to me that football was that important at that time, why did it become important again? So I went back to Mr. Overton in the investigation, told him everything that I had talked about and told him that I felt like that I had not been able to prove that he moved for athletic purposes. And I think it's impor-

tant that I had to prove it. And I didn't do so and I sent it and stood by that statement and have stood by it from that time on.

Q. Do you feel like you are able to talk confidentially with Coach Overton on a man-to-man basis?

A. Well, certainly we can.

Q. Did Coach Overton every (sic) tell you that he told Coach Qualls that there was bad blood or conflict between himself and the Jones' family over the amount of playing time that the Jones boy was getting? Did he ever tell you that?

A. In our conversations he told that Charlie Qualls had called him on two occasions.

Q. Why don't you just tell us what he told you that he told Coach Qualls. Can you recall that?

A. I don't know that I know what he told Coach Qualls. I don't think that we ever discussed the fact that we -- see, I never dealt with it from a standpoint of what Mr. Qualls thought or what the other district thought.

I thought we had an obligation to make a judgment as to whether or not, you know, that we thought it was moving for athletic purposes. And I never doubt that they -- the rule is clear, that they make the judgment whether the youngster is eligible or not. We are obligated, if we think there's been tampering, or if we think they're moving for athletic purposes, that we refuse to sign that and alert them to that fact. That is

our responsibility as a district and we understood that clearly. So I didn't discuss with him what Mr. Qualls thought or what he did or anything of this nature. I questioned him as to what our responsibilities were.

Q. Okay. Okay. Is it your statement today you don't recall him telling you --

A. I don't recall -- I recall us discussing. He said I have had telephone calls from Mr. Qualls.

Q. Okay. Did you ever report back to anybody the substance of you investigation, what you found?

A. Yes, I -- I called I believe Bo Snowden back and told him that I did not feel like that I had proved that he had moved

satisfied with the investigation at that time what information I had. He asked -- I'm not for sure whether he asked me or I volunteered to call Charlie Qualls. I called Charlie Qualls and he told me that it would be best that I call Dr. Poteet. And I called Dr. Poteet at that time.

Q. What did you tell Dr. Poteet the results of your investigation were?

A. I called Dr. Poteet and told him that in what I had investigated that I felt like the youngster should be eligible. If I were voting on the District Executive Committee, and what information I had at that time, that I would vote that he be eligible.

Now, that's my -- was the initial conversation. Now, there was more as he questioned me and I'll certainly be glad to answer that.

Q. All right. Did you tell him that you had made an investigation?

A. Yes, I told him I had, exactly as I've told him what I had done, maybe not in this lengthy fashion, but I had done an investigation.

Q. Did you tell him anything at all that you found that looked wrong with the application, anything that looked wrong with it?

A. The application itself? Yes, I told him we would

continue to sign it, yes.

Q. In other words, you stood by your original --

A. I didn't discuss -- I did not discuss with him what I've discussed in here today. I just simply said that we're both professional people and I think that I told him that I thought that what I thought and, you know, that was it.

Q. Okay. By this time had you become aware of Greg's actual playing status as far as Irving team was concerning vis-a-vis the other quarterbacks?

A. Oh, yes. I know who's playing and I go to the games and visit with fans, yes, I was well aware.

Q. Did you know the Hands kid?

A. Hands. Bryan Hands, yes, sure I knew Bryan.

Q. And did you yourself aside from your investigation during the games or anything else, did you yourself ever hear fans commenting one way or the other about Bryan Hall or Greg Jones, these two Juniors?

A. Bryan Hands?

Q. No, Shawn Hall, excuse me.

A. Shawn Hall, Bryan Hands, yeah, I hear conversations about all schools, sure.

Q. So Mr. Hands and Mr. Hall, you would even hear comments about who ought to be the quarterback?

A. I don't -- I don't think people would tell me who they thought ought to be quarterback. WE made decisions about who's

quarterback, coaches do, I don't, and I don't think a fan would tell me that, not very long.

Q. Well, I didn't want to suggest that they could or that they had that kind of influence with you, sir. What I was asking is just, you know, getting a hot dog or a coke or everything else, did you ever hear those kind of comments?

A. I hear conversations about certainly about who is the starting quarterback, and I certainly knew that he went in and win a ballgame. Certainly I know those kind of things.

Yes, I knew Greg. I knew Shawn Hall, and I knew -- I knew all of them and Mr. Overton and I may have had conversations during the course of the year even about circumstances of that nature, you know, we're in the business, same business together.

Q. All right. Now, that is not at all unusual for you, is it, to be discussing kids that are about the same skill level? Is that unusual in football sport in high school for a coach and athletic director to be talking about those things?

A. About who starts and --

Q. Yes, just about --

A. Yeah, that would be uncommon. It would be uncommon for me to ever in any form or fashion suggest to a coach who ought to be playing quarterback or anything. That would be highly unusual. We might discuss things if it were a problem that what we're going to do to maybe cutt (sic) off, maybe

(5)

Supreme Court, U.S.
FILED
MAY 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX III

STATEMENT OF FACTS ("S.F.")
(Pages 316 to 604)

controversy, or that sort of thing. That would be all we would discuss but who plays is his decision.

Q. All right. If you'll listen to this question.

A. All right.

Q. In the fall of 1984 did you have to have any conferences with Coach Overton about any quarterback controversy at Irving McArthur at all?

A. Yes.

Q. And what was that controversy?

A. WE talked in terms, and I can't give you the exact date, but I went to Coach Overton's office and probably in the fifth or sixth ballgame of the year to discuss this, and if you want -- it was a personal conference, rather than an athletic director coach conference. I would really thinkt hat

more than anything else, about where his ball club was and we simply talked in those terms.

Q. And what did you tell him, what did you two talk about?

A. I don't tell him anything. I listened to his situation and -- because it

Q. Well, what was the controversy that you were talking about?

A. The controversy?

Q. That was my question. In the fall of '84, did you talk about any controversy of any kind, quarterback, center,

personal, any other kind of controversy with Coach Overton? Do you recall ever talking about any kind of controversy with him during the fall of 1984?

A. I don't like the word controversy. I don't think the conference was about a controversy, no.

Q. So, did you have any conferences about controversy?

A. No.

THE COURT: Leg me use the word. How about a concern?

THE WITNESS: Yes, a concern is a better word.

THE COURT: We all have concerns.

A. You know, a concern -- a controversy to me is that you feel like someone might be in jeopardy or the people might be after your

job because of it or something. That's the way I relate to that. We didn't have any controversy of that sort at all. A concern, yes, about things that you discuss during the course of the year about football teams is not unusual at any of the three high schools.

Q. So the question is: Did you have any talks that fall about any concerns regarding the Hands kid, the Hall kid or the Jones kid? Any concerns, any problems? Do you recall any?

A. We had a conversation, yes, sir, in the middle of the year about the quarterback situation. He did the talking, I did the listening. He needed to talk to somebody, yes.

Q. What did he tell?

A. What?

Q. Did he have a problem?

A. Yes. A problem?

Q. Yes, sir, a problem. Something he was trying to work out?

A. He had a decision to make, yes.

Q. Okay. Is that a problem or is that just a normal coaching decision?

A. That what they're hired to do, yes.

Q. What kind of a decision did he work on, what did he talk with you about? What was the decision?

A. He simply talked to me in terms about a Senior.

Q. That's the Hands kid?

A. We talked about Seniors and we talked about things of that nature, yes. And --

Q. Who was the senior you were talking

about?

A. Bryan Hands.

Q. That was not the Jones boy or the Hall boy, correct?

A. No. We discussed the quarterback situation, just as a whole, but we basically talked about seniors. And we basically, if you want to know the truth, this was a personal conversation, you know, and it was not an athletic director-coach situation or we were going to handle a problem. We simply talked about coaching. His philosophies or so forth. He wasn't defending anything to me. We were doing it in simply a conversation and I

really don't know that I want to continue to discuss a personal conversation as far as personnel at McArthur High School. I really don't think I ought to do that.

THE COURT: Wait a minute, but we do have a problem. We have a problem in this connection, Mr. Lytal. We have a problem in testimony that there was a controversy involving family of these various quarterbacks. I will say partisan supporters of them and also impacting on Coach Overton, something of that nature. So, there has been that controversy. That was presented at the first hearing, some of those matters by Mr. Qualls, in his testimony he's acknowledged this. So, the Court will say that it's already before us. And if, in fact, whatever your testimony would be, the Court is in need of that information.

MR. BOYD: Your honor, in all fairness to the witness, do you think it would be proper to also advise him that Coach Overton did not support that line of reasoning.

MR. NOLAN: Excuse me, your honor, can we confer with you outside --

THE COURT: Yes we can come around to the side over here.

(Whereupon a discussion was held out of the hearing of the Court Reporter and the Jury.)

THE COURT: Mr. Lytal, what we're in conference about is the fairness of whether I've asked you or given you a

predicate to be an explanation of why the questions probably are desirable for being answered. I did say that Coach Qualls had said that he presented to the first meeting of the Executive Committee that made a ruling that there was -- and he had inquired and found that there was a controversy involving feelings between the coach and players, feelings between the parents and the players, and that this information that he had, this information was given to the Executive Committee at the time they made the --

MR. BOYD: Pardon me, your honor, we have a witness that's come and we need to escort him out.

(Whereupon the witness was sworn.)

THE COURT: Your name, sir?

THE WITNESS: John Campbell.

THE COURT: All right. Mr. Campbell, we have had the rule invoked which means that witnesses may not discuss their testimony with anyone prior to testifying, so I'll instruct you not to discuss anything with anyone regardless of whom except these lawyers. If you wish to discuss it with, until this hearing is over, because your testimony is yours and should not be influenced by anyone. That's the purpose of that protection. So, if you will wait outside until you're called, please.

THE COURT: Back to what I was saying. And further, this Court has had Coach Overton here and questions

concerning that subject matter have been directed to him and we have received his answers. So consequently, we have inquired into this subject matter at this time and you have expressed a reservation you felt like these things were very personal between you and he and as was said by some Judge, all we're doing is, it's our burden to find the truth of the circumstances, if we can. So, even though it is whatever you feel it is, it is necessary , if you can, to let us know.

A. Oh, okay. I'll answer the question. It was not -- I did not look at is as a controversy at the time, you know. Now, the internal affairs of a football team and those things are not -- I'm not aware of as you would well know, that I don't know, I would not know of all of the things that were going on in practice. I would not know what the

competition level was, I would not know the attitude of the youngsters.

Our conversation on that day dealt with the situation really as who would be the starting quarterback and he needed to talk to somebody as far as the decision that he had to make of whether to continue to go with the senior quarterback or whether to make a change.

Now, we did not discuss who to make the change, which kid or anything of this nature, but we did discuss that in a personal conversation, he just needed to talk, and we did talk in those manners at a certain level in the season. I believe it was around the fifth ballgame. He had lost a ballgame his first

ballgame of the year at that time.

A. All right, sir, and for the record, so that's clear, the senior quarterback that was concerned about was the Hands child?

A. Bryan Hands.

Q. All right sir. Did you relate that in any to Dr. Poteet ever?

A. No.

Q. Other than this Court and Coach Overton, that' been personal through this date?

A. What we discussed in this office?

Q. Yes.

A. I don't think I've talked to anyone about that.

Q. All right, sir. At this time I'm going to show you what's been marked in evidence as Exhibit 8. It's a letter from Dr. Power to Dr. Poteet. And paragraph number

two, will you please read it in the record. It's a numerical record and I have a question or two to ask you about it. If you would read it out loud, please sir.

A. After a review with Irving officials, it was clear to us that beyond a question a controversy surrounded Greg Jones and the quarterback position at Irving McArthur. All information indicate that indeed there was a dispute over much of the two -- on which of the boys was the better quarterback and that the controversy did extend to the fans and

boosters.

Q. I have a question for you on that, Mr. Lytal. You told us a minute ago about the one situation that you discussed with the coach concerning quarterbacks. Did you personally ever tell Dr. Poteet any of those things?

A. He probably asked me the question if there was a controversy and who should -- who was the starting quarterback at McArthur High School.

Now, if you asked me that question and really you're asking a layman in that terms because I don't watch them practice, and I don't decide who plays, but I probably answered him: Yes, there was some discussion as to who was that.

I think I would answer that question -- I think I would answer it here today, but

I still contend to you and to anyone that Mr. Overton knows the best answer as to whether there was a controversy or not. You know, I hear fans and I hear them all of the time, and I probably answered that question and I would probably answer it the same again: Yes, there was discussion.

Q. Okay, let me ask you this: Paragraph number two said the information indicated that there was a controversy around Gregory Jones. Now, you haven't told us about that this morning. Did you say that to Dr. Poteet that there was a controversy that surrounded Greg Jones? Specifically that. Did you make that statement?

A. I don't believe I would very used the youngster's name. I don't believe I did that. I think, as I said, I think I probably answered the question: Yes, there was discussion among the fans as to who should be the starting quarterback. I discussed that with Mr. Jones.

Q. And who were you referring to, discussion among the fans about who should be the starting quarterback?

A. Well, there were three of them: Bryan Hands, Shawn Hall and Greg Jones. They all played at one time during the course of the year.

Q. Did you tell him there was a special controversy that surrounded Greg Jones, a particular controversy?

A. We were talking about Greg Jones at the time so I suppose if I answered the

question he might have related it to Greg Jones, but, no, the controversy was at a position.

Q. Among all three boys?

A. Yes.

Q. And who was the first string quarterback through the season?

A. Bryan Hands was the starting quarback.

Q. And you told us a moment ago about the controversy in that regard, correct? Did you tell us a moment ago about the controversy that concerned Bryan Hands a moment ago? Is there anything else you want to say about that?

A. You know, as far as -- the only controversy that I

dealt with, I answered the question that the fifth game that I went over to talk to him, and I would think that any two professional people who had been coaching a long time would discuss that if it were coming to mind, and I would not think that would be strange this year or in years to come if coaches need to talk during the course of the year over a game that's been lost.

Q. Was there controversy, and did you tell Dr. Poteet there was controversy or dispute over which of two boys were the better quarterback? Did you say there was a controversy over two boys to Dr. Poteet?

A. Dr. Poteet asked me questions in conversation and I didn't write those questions down, and I think I related to a situation of Greg Jones. That's what I called him for. I answered questions in

regard to Greg Jones and his eligibility at Highland Park High School. That was our conversation. I answered questions and I'm sure they were in general terms as to what -- if he asked me if there was some controversy, I probably said: Yes, on who was the starting quarterback at McArthur and Greg Jones was a part of that, was a quarterback at McArthur High School.

Q. Was there any greater controversy regarding Greg Jones or Shawn Hall or Bryan Hands?

A. I can't answer that question, because I'm not that close to the situation over there.

Q. Okay.

A. I -- I couldn't answer that at all. I just know that during the course of the year that there were -- there was a discussion among certain fans and things of this nature as to who was the starting quarterback. Now, I don't know who was who and I didn't care. I just felt like Ray would make that decision.

Q. Did you make the statement that there was any controversy regarding Greg Jones that involved the fans? Did you make that statement?

A. Did I make it?

Q. Yes, sir.

A. I'm sorry, but in the conversation with Mr. Poteet, and I certainly am here to testify the truth, and I really don't know exactly what I said to Mr. Poteet on the

phone other than I can tell you what my intentions were, my intentions at the time was to help Greg Jones get eligible at Highland Park. That was the reason for my telephone conversation.

Q. And why was that your intention?

A. Because I felt like from an Irving School District standpoint that he should be eligible, and I called to tell him that.

Q. All right. Did you believe in the spring of 1985, forget what you told Dr. Poteet or didn't tell Dr. Poteet that there was any controversy over the fans over Greg Jones and

anybody else about whether or not Greg ought to be the starting quarterback? Did you hear anybody relate such a controversy to you, any of the fans?

A. I was told probably on one occasion of a person who was at a game that heard it discussed in the stands. I think on one occasion the entire year, yes.

Q. Is that very much of a controversy?

A. I hear lots of controversies. Yeah, I hear lots of different things during the course of the year, yes.

Q. Is there lots of controversy usually every seen over lots of different positions, if boys are about the same skill level, the kinds of controversy you're talking about?

A. I think you hear things and, you know, as far as controversy during the course of the year at all schools, yes.

Q. Okay, did you consider whatever the quarterback competition was at Irving, did you consider it to be any particular problem? Was it causing disruption and unhappiness, those kind of things with the fans or the booster club, and if so, how.

A. Oh, I don't know, I don't know whether it caused any disruptions or not, you know, I think you determine that by practice. You know, fans don't determine who starts, and those sort of things.

Q. You understand my question. I'm sorry, my question is not clear, Mr. Lytal and I apologize for it, I do. My question

is: Did you become aware to people getting upset about whether Greg or Shawn or Bryan were starting quarterback?

A. I had no one come to my office for that, no.

THE COURT: Mr. Boyd, maybe one of your witnesses is here in the audience.

MR. NOLAN: He's the attorney for the Dallas Morning News.

Q. Did you ever go to booster club meetings?

A. I go to booster club meetings at the different three schools all year, yes.

Q. At Irving McArthur booster club meetings did you notice the viciousness over the quarterback situation among the people there in 1984?

A. No. No.

Q. I would like for you to read

paragraph three of Dr. Poteet's letter.

A. Repeatedly the athletic director in reply to my questions stated that Gregory Jones -- if Gregory Jones was assured of being a 1985 starting quarterback at Irving McArthur he would still be at Irving McArthur. Each time I asked, he answered in the the affirmative. Yes, Gregory Jones would still be in Irving if he was certain he would be the starting quarterback. If I may say that I use reading glasses and that wasn't easy.

Q. I'm sorry. I will read for you from now on if we have

speculative question. He wasn't the starting quarterback and I answered the question. I stand by that and I answer it here today in exactly the same way.

Q. And he wasn't the drum major at Irving McArthur, to your knowledge?

A. No, I don't think he was.

Q. And he wasn't the president of the student counsel at Irving McArthur, was he?

A. I don't know that.

Q. You don't recall that, though, do you?

Q. You don't recall that, though, do you?

A. No, I certainly don't. I would not know that.

Q. So, was there any particular reason at that time, any kind of special relationship between Greg Jones and Irving

McArthur and leadership positions to which you referred that you felt would have compeled (sic) the family to undergo additional hardship to try to keep him there?

A. I'm sorry.

Q. Was there any other leadership position that Greg Jones held? He wasn't president of the student counsel; he wasn't the drum major. Was there anything else that was special between Greg Jones as far as student body leadership that would have compeled (sic) him to stay at Irving McArthur so he could have executed his position?

A. I"m not qualified, because I do not know that answer. I dealt strictly from the standpoint of athletics. I do not

know what other positions Greg Jones held at

McArthur High School.

Q. All right. If I were to ask you if any student who's on the football team trying out for quarterback, any student, whether or not there's any controversy or anything, if I'm asking you if any student were to be guaranteed the starting quarterback position at Irving McArthur, aside from Greg Jones, your answer would probably be the same, wouldn't it, that their family would try to stay?

A. I answered that certainly in a general way, sure.

Q. That was not intended to be just Greg Jones?

A. I just felt like that answer to that question he used a specific name, but if you ask me any other senior athlete at any particular school, I would answer it the same way; If it was at all possible and he were

happy, he would not move.

Q. All right, thank you.

Will you tell the Court whether or not during your conversation with Dr. Poteet you were trying to leave the impression that coincideed (sic) with your judgment on Greg Jones? You were trying to leave the impression with Dr. Poteet of your own judgment that the boy should be allowed to participate, is that what you're saying?

A. I first spoke to him as far as the Irving School District, because I represent the Irving School District, and I said that we intended to sign that and we would stand

signature. Then I told him from my own personal standpoint if I -- I do not -- I am not a member of the District Executive Committee, the principals are. I said if I were, I would vote for the youngster to be eligible.

MR. BOYD: All right, pass the witness, your honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. NOLAN:

Q. Coach Lytal, you said that you didn't know Greg Jones very well back when you took that previous athletic participation form to Cecil Green, is that right?

A. Yes, sir.

Q. You hadn't conducted an investigation at that time?

A. On, no. No.

Q. Did Cecil -- did Cecil Green to your

knowledge know Greg Jones any better than you do?

A. Oh, certainly not. Cecil Green would go on my recommendation as far as signatures were concerned.

Q. All right. And when you -- your recommendation to Cecil Green was to sign the form?

A. To sign the form, yes.

Q. And you made that recommendation, because you didn't know of anything, any reason not to?

A. I did not, unless I receive a call from the coach that

he feels like there's something wrong, I do not investigate any previous participations that come through that office. That was a normal procedure.

Q. So, if Coach Overton signs it basically then Cecil Green and you'll recommend that Cecil Green sign it?

A. Yes, certainly.

Q. So Cecil Green's certification on there doesn't indicate anything more than basically Coach Overton thought that there wasn't a move for athletic purposes? He doesn't do an independent investigation?

A. Oh, certainly not.

Q. You said that you had a call from Coach Snowden?

A. Bo Snowden, athletic director at Highland Park.

Q. And he asked you to investigat this.

When was that call, what time frame are we talking about? Was it after or before the March hearing?

A. The call came after the first District Executive Committee meeting of the other district. They had already voted not to accept it. That's when Bo called me.

Q. Now, at the August District Executive Committee meeting you wre present at that August 9th?

A. In Mesquite, yes.

Q. Did anyone, did either I or Mr. Boyd ask you to testify at that August meeting?

A. No, sir.

Q. Did I talk to you and Coach Overton during a break in that hearing about your testimony?

A. You told me that you felt like that Coach Overton had given all of the information that was needed I believe or in some manner. That I could not add anything to the testimony.

Q. Did I tell you that or did I ask you if you had anything else?

A. You probably asked me that, yes.

Q. Do you recall what you told me?

A. I told you, yes, that I thought Coach Overton had given you the facts.

Q. Now, I want to get down to when you first made your investigation. Was that after their March 20th, the first District 9 AAAAA District Executive Committee meeting where they decided that Greg was not eli-

gible?

A. When I made the investigation, Greg had already been voted ineligible.

Q. And you talked to a person whose family attended McArthur High?

A. I talked to a friend in the community who I knew attended all of McArthur's -- and I coached at McArthur for ten years, so I certainly knew fans and things of this nature, and I called him in confidence to ask him to please see if we can prove that this -- that he made the statement: I'm going to move my boy to Highland Park High School to play football.

I wanted to know that if he did.

Q. And you talked to this person and Mr. Jones, is that correct?

A. I talked top him and Mr. Overton, Ray Overton.

Q. Did you talk to anybody else?

A. No.

Q. And who was the coach at Highland Park during this time?

A. Frank Beavers.

Q. Is he still there?

A. No, he has gone into another administrative position over there and Randy Emory is the head coach.

Q. Now, you said that when you heard about a move from Irving to Highland Park that that raised a red flag or something, you thought perhaps there was a violation because they hadn't sold the house in Irving, is that

correct?

A. Yeah, when I started the investigation, you see, at that time, as I said before, unless I get notification that there's a problem, I don't investigate it. You would spend the entire year investigating. And so I had no report from Mr. Overton that he had any problem signing that paper whatsoever, so I didn't even know probably it was Greg Jones who went through there.

And so I took it probably several to Cecil Green. When I was asked that the District Executive Committee had something, I felt a responsibility ability at that time to get

as much as information as I could about it and, yes, when I talked to Mr. Jones, and when I talked to the other, any time you have two households, and I've been in athletics a long time, that you have to consider that fact, you certainly do.

Q. Would you consider the fact that the move was a short distance, would that be a factor that you would take in consideration?

A. No, not -- because I deal with that quite a bit inside Irving, you know, with people moving in our transfer policies, so I deal with short moves quite frequently. And that didn't alarm me in that fashion.

Q. Was the thing that alarmed you the most the fact that they didn't sell the house in Irving?

A. Well, I think the thing that alarmed me the most that they had indication over

there in their District Executive Committee that they were going to vote it down, and I had a responsibility from the Irving School District to investigate everything I could that we, you know, because essentially we're dealing with two professional groups and I didn't --

Q. Of the facts that you discovered?

MR. BOYD: Your honor, I think that's been asked and answered. He told Mr. Nolan what he was alarmed by and that was the action of the District Executive Committee.

THE COURT: I think he was still answering the question, why don't you finish out your answer.

A. I think that an investigation, that once it's brought to your attention --

MR. NOLAN: I'm sorry, it's not the question I asked. If I could repeat my question.

THE COURT: All right, repeat your question.

Q. Of the facts you discovered you said that one of the, you said something that concerned you was the fact that they didn't sell the house in Irving. I just wanted to know of the facts that you discovered, which was the fact that concerned you the most?

A. Well, I think that -- that got my attention to the fact that I think that would, in any case, that would get your attention to look into it further. See, I had some concern as to the aunt, if the aunt was tied to the Highland Park booster club,

you know, I wanted to know that. I didn't find any indication whatsoever that they had knew they played football in Highland Park. So I pursued in in the manner that I thought to be professionnal (sic) to find out all of the information in order to see that the Irving School District signed that in good intent that we didn't think so. I don't think we --

Q. Now, you discovered some facts which indicate that there might be a move for athletic purposes, but --

MR. BOYD: Objection, your honor, that is misconstruing what the witness said.

THE COURT: What he said, alert, his wording was

alerted.

MR. NOLAN: All right.

MR. BOYD: All right.

Q. That alerted you and you discovered some facts, which indicated to you that there had not been a move for athletic purposes, is that correct?

A. Well, my final judgment was that I could not prove that Greg Jones moved for athletic purposes, and I think in my opinion that in our case we had to prove it and we, and I could not prove that and I signed it or remanded that it be remained signed from that standpoint.

Q. No, you said that you were talking about our duties in the District 9 AAAAA. Are those two different duties?

A. Well, the rules are clear that we -- if we feel like there has been a violation of

a UIL policy or rule, we are to, by that signature, notify them if we refuse to sign it. That simply notifies them we have some questions as to what it is. They make the decision as to whether the youngster is eligible. We understood that totally.

A. All right, if you say we think he moved for athletic purposes, are they bound by your signature?

A. No, sir.

Q. If you say he did not move are they bound by your signatures?

A. No, sir, the UIL is clear in that statement.

All right. Now, if you are presented with certain facts and in your mind you say: I don't think he moved for athletic purposes and that's what you signed and they hear those very same facts and they say in our mind we think he moved for athletic purposes, what are they supposed to do?

A. Well, any District Executive Committee makes a decision whether they think the youngster is eligible in the best interest of their district. And we would do the same think in District 8. If we probably -- well, that's a judgment that they make. It does not question our integrity, I don't feel, questioned in that manner.

Q. I'm sorry. I'm sorry, I just want to know what are they supposed to do if they hear the same facts you do , in fact, you

present them, you make a decision that based upon these facts this is not a move for athletic purposes? They listen to the facts and they say: We think it is a move for athletic purposes. What are they supposed to do?

MR. BOYD: Excuse me, objection. Number one, it calls for facts not in evidence. Very clearly in this record, none of the facts that Mr. Overton or Mr. Lytal came up with were presented to this committee. That's the record. He's assuming facts not in evidence. He's asking this man to speculate on what any other executive committee might do and that's asking him to delve into somebody else's thought processes, which calls for speculation and objectives.

THE COURT: Your question does include assuming they heard the same things that you knew.

Q. You were there at the meeting of August the 9th, correct?

A. In Mesquite, yes.

Q. And you listened to what they heard?

A. Yes, sir, from Mr. Overton.

Q. Assuming that they heard that from Mr. Overton and Mr. Jones, I believe those were the only two people?

A. That's right, the only two, right.

Q. Assuming that they thought that that was a move for athletic purposes, what is it their duty to do? What are they supposed to do?

A. Of the District Executive Committee?

Q. Yes, what is the District Executive Committee supposed to do?

A. If they feel they have moved for athletic purposes, the youngster is ineligible at Highland Park High School. That's their responsibility.

Q. Are they supposed to rubber stamp and automatically approve whatever the send, whatever the Irving McArthur writes on it?

A. Are they supposed to rubber stamp it?

Q. Yes.

A. Certainly not. It's a double check.

Q. Okay. All right. That's why you have a District Executive Committee reviewing the sending school, the previous athletic participation forms?

A. I think that in most cases unless you're alerted to something that you don't -- that it -- a rubber stamp is not good work, but I think most District Executive Committees will accept the sending schools, unless they're alerted to something.

Q. If they're alerted to something, should they look into that?

A. Certainly they should.

Q. If they're alerted to something, and they have a different opinion from the sending school, should they go with their opinion or the opinion of the sending school?

A. Well, I think by that I go by rules that our District Executive Committee has the

authority to rule the kid eligible or ineligible.

Q. Let's go past authority. If they decide that he moved for athletic purposes, do they have the duty to rule him ineligible?

A. If they think he moved for athletic purposes. Yes, they have a duty. They have a responsibility, yes.

Q. This phone conversation with Dr. Poteet that you had, was that one conversation?

A. One conversation.

Q. And the conversation was about Greg Jones?

A. Yes, sir.

Q. So, if the quarterback situation, any controversy or anything were all related back to Greg Jones, is that correct?

A. All of our discussion was directed to Greg Jones, yes, sir.

Q. All right. Did you ever have a conversation with Coach Overton prior to the first District Executive Committee meeting in March about whether Greg Jones had moved for athletic purposes?

A. Prior to the signature of the --

Q. I'm sorry, prior to the March 20th, 1985 meeting, District Executive Committee meeting where he was first held ineligible?

A. Ray and I never discussed it, no, we had never discussed it.

MR. NOLAN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. BOYD:

Q. Mr. Lytal, if there's no credible evidence that a child has moved for athletic purposes, should a District Executive Committee rule that?

MR. NOLAN: Your honor, I object, that's based upon facts which are not in evidence.

THE COURT: Sustain your objection.

REDIRECT OF MR. LYTAL - BY MR. BOYD

Q. You recall Mr. Nolan's questions about whether or not if an Executive Committee believes that a child has moved for athletic purposes whether they ought to rule that way?

A. I recall that question, yes.

Q. If a committee does not believe that a child has moved for athletic purposes, should they rule that he has?

MR. NOLAN: Excuse me, your honor, that is based upon facts which are not in evidence.

MR. BOYD: It's rebuttal, your honor, he's the one that asked the question.

THE COURT: Counsel, I still say there is no evidence that they did not believe what they ruled.

MR. BOYD: There's no evidence that they did believe what they ruled either,

your honor, because you haven't heard from any of them. We haven't had a single witness from that 9 AAAAA second meeting.

MR. NOLAN: That's why it's not in evidence.

MR. BOYD: You've heard from the first group. You heard Dr. Matthew said he went on supposition, and that he probably made a wrong decision. That's in the evidence. He said it should not be done on guessing; it should not be done on supposition. And that he was concerned because there was not hard evidence at the meeting. That's what the evidence is.

MR. NOLAN: Your honor, what we've maintained all along is that the decision of the first hearing is important for

other matters and that's what you explained. That's why you wanted to go into that.

THE COURT: The Court was looking at the impact, the continuing impact of the first decision upon the later deliberations.

MR. NOLAN: Yes, your honor. And you explained that to us, and it's the second hearing that is important as to whether they had the facts before them and whether they had the facts to make the decision which they've made and we've got those folks out in the hall. We can bring them in here ask them did you --

MR. BOYD: I'm the one that subpoenaed them, your honor, and we have no evidence of quality of the evidence that they considered at that second meeting. We know what was said, but we don't know what they

were told beforehand.

THE COURT: Let me make a ruling here. I consider that the evidence that the parties moved from Irving and took rental property in Highland Park and did continue to own their own property in Irving is not determinative but can be viewed either way. I believe it is some evidence is what it is. I believe that.

Consequently, from the evidence I've heard, I have not heard evidence -- I have not heard that there was no evidence or that they didn't believe what they ruled. So, counsel, there's no evidence in this case to say that they did not have some

statement. Now, if they believe to the contrary, there is not evidence in this case that they believed to the contrary, counsel, at this point. That they believed contrary to the way they voted.

MR. BOYD: There is no evidence that says they believe what they voted either, your honor, respectfully.

THE COURT: Counsel, as far as I can see, when a person votes a way, that is an expression of their belief. Consequently, that is an affirmative statement. So, I don't see that there's any evidence to the contrary at this point on the way they cast their vote. So I'll persist in my ruling. I'll hear from you any more now.

MR. BOYD: My position has not been made clear and I apologize for that. If the panel is not impartial and they are not

voting the evidence but they are voting other values, other instructions from interference, the vote is not necessarily their belief.

THE COURT: The Court will respond further. The Court has evidence before it that the Court could consider a bias in the first hearing. The question is going to be whether or not if that was sufficient to cause the first ruling to be what it was and then the second whether or not that bias, if it is found to have been such, as the proximate cause of the first ruling. If it carried forward to the second hearing is what the

Court is going to be faced with.

So, I do now -- now we're talking about bias at this point. And the Court finds that there is already there is evidence of some bias demonstrated at the first hearing when statements were made. They're in the evidence. The Court considers them to demonstrate bias. I believe one of them has stated, one of the parties participant has stated that the evidence must establish beyond a shadow of a doubt. The Court considers that to be a clear bias against any transfer under fair standard of hearings. So, we're getting over to bias now. But, counsel, if you want to ask about bias, you can do it, but there's no evidence.

MR. BOYD: I can rephrase that.

THE COURT: That's what your're (sic) going to have to go for.

MR. BOYD: And one other thing, your honor. I would like for the Court, we have made evident in our trial brief, which the Court may not have had a chance to look at, under the Supreme Court case in this case, House of Tobacco makes evident that you do not need to reapply to a board or an agency which has made an erroneous ruling. You do not need to do that. You do not need to apply and we have made from the very beginning, the fact that we made our position, we did not request this rehearing. Our position is they cannot go bootstrap themselves out of trouble. So we are not agreeing and

that's not our position with Mr. Nolan at all.

MR. NOLAN: Counsel, I'll let you go into bias. I sustain your objection on your question.

MR. BOYD: Okay.

Q. Mr. Lytal, should a District Executive Committee base its opinion on bias?

A. No, sir.

Q. Prejudice?

A. No, sir.

Q. Insufficient evidence?

A. No, sir.

Q. Should it be arbitrary?

A. Yes.

Q. In its decision? You think it can be arbitrary. IN other word, not pay attention to the evidence?

THE COURT: Arbitrary means to determine on subjective rather than objective

standards.

Q. Should a District Executive Committee make its decisions based on things that are not heard at the committee meeting? On what it wants to rather than what it seen in the evidence?

MR. NOLAN: Excuse me, just one question at a time.

THE COURT: Narrow your question. Restate your question.

REDIRECT OF MR. LYTAL - BY MR. BOYD

Q. A moment ago you said it should not make a decision on insufficient evidence.

A. That's right.

Q. Okay. Should it base its decision on credible evidence?

A. Yes.

Q. Should an executive committee base its decision on supposition instead of facts?

A. No.

Q. Should a committee guess?

A. No.

Q. Should it speculate?

A. No.

Q. Do you agree that the decision to deny a young man's ability to develop his own talents, whatever that might be in UIL activities is a serious decision?

A. Yes.

Q. And that it should be based on good

evidence?

A. Yes.

Q. Do you have any personal knowledge of what any of the voting members at the March 20, 1985 executive committee meeting knew, do you have any personal information of what they knew?

A. Other than the fact that they had received the transfer from, no.

Q. And at the District 9 AAAAA meeting on August 9th, do

you actually know what was in the heads of those people that sat up there at that table before the hearing started, do you know what they had been told about the matter before the meeting?

A. I had some information as to what they -- I had some information after the first hearing as to why they requested it, yes.

Q. Okay. But the very individuals that were sitting there at the table representing the schools, you didn't know what they knew, did you?

A. No.

Q. And you were not aware of any briefings that they had had, correct?

A. No.

Q. Okay. And you weren't aware of any instructions they had received, correct?

A. No.

THE COURT: Well, counsel, all of those questions, if they had -- should you put them with if they had?

Q. If they had received any instructions, you're not aware of any of those instructions, are you?

A. No.

Q. And if they had been given information about the case prior to the District 9 AAAAA meeting in August, if the people that sat there had been given information, you don't know what that information was, do you?

A. Well, now, I received a letter from Dr. Poteet explaining to me the reason they had denied the youngster's eligibility, if that's information.

Q. No, what I'm asking is the people, the individuals that were sitting there on August 9th. Those people that voted.

A. Uh-huh, the principals.

Q. Right. If they had been given some briefing you would not know what the subject matter would be, correct?

A. No.

Q. You would have no way of knowing the extent of their knowledge about Greg Jones?

A. No, sir.

Q. No, you recall Mr. Nolan's question about whether or not your conversation with Dr. Poteet was directed to Greg Jones?

A. Yes, sir.

Q. But you also remember your statement earlier that you made some general statements as well, you talked about Greg Jones, if he were still the first team quarterback would probably want to stay, you remember that?

Q. Uh-huh.

A. But you said that applied generally to all kids, doesn't it?

conversation that I tried to reaffirm him that our district stood at the same position it did as prior to that. Now, we actually probably got into philosophy of the way we feel about rules and so forth and so on, which is probably a --

Q. Do you recall Mr. Nolan's question about if you're alerted to something whether or not you ought to investigate?

A. Yes.

Q. If you're alerted, should you investigate the source, should you not, shouldn't you investigate the source if you're alerted about the facts?

A. Yes.

Q. And if you're told about some unfavorable coments that someon has made about this particular transfer request, shouldn't you investigate that source?

MR. NOLAN: Your honor, I object that this had been leading and leading and leading.

THE COURT: Sustain your objection.

Q. Tell me what you would do, if anything, Mr. Lytal, if you were on a District Executive Committee and you were alerted as Mr. Nolan suggested, that there had been had made statements, which you didn't think sounded right, if you were thinking about transfer approval, what would be your action at that point in time, if some particular person is alleged to have said something, what would be a reasonable approach?

A. The first thing you would want to do is hear the

person say it to the District Executive Committee and then you would pursue. But I do think that when you are alerted to a situation that you investigate it thoroughly. You just don't stop at one conversation.

Q. So you would investigate rather than just speculate, correct?

A. I would investigate, yes.

Q. Have you ever requested a transfer student in your District 8 AAAAA, is that correct?

A. Yes, sir.

Q. To present witnesses, have a hearing because of a question on eligibility?

A. Yes, we have had two years ago we had a situation and I hate to answer this question because it's not necessarily related, but we did have a situation occur over a transfer policy two years ago that

affected the eligibility of a kid, a youngster at Nimitz high school, and we did have a -- the District Executive Committee did have a hearing and people did present evidence from our district as to that occurrence. So that is one. It was a -- it was not a question of what's in question here, it was a question of a -- of a signature and having it on file.

Q. Okay, was this situation where both the sending and receiving schools had approved the transfer?

A. No, the sending school had not approved it and it was

a paper work situation. It was something. And the reason I say -- it was not a question of whether they would approve it. It was a question that they had not.

Q. So it was a documentation problem.

A. Yes.

Q. And even though there was just a documentation problem, your District Executive Committee decided to have a hearing on it and present evidence.

A. The District Executive Committee ruled him ineligible and a hearing was held.

Q. Okay, was a vote taken at this hearing?

A. Yes.

Q. Was there previously a vote taken or was it taken at the hearing?

A. I can't answer that, I wasn't at the hearing. The superintendent represented us.

Q. Okay. Where the sending and receiving schools have approved a previous athletic participation form, are you aware of any instance in which those requests have been denied in your district?

A. Not in our district, no.

Q. No, if you in considering a previous athletic participation form have any questions regarding whether or not there's been recruiting or a move for athletic purposes, you don't have to sign the form, do you?

A. No, sir.

Q. And Coach Overton doesn't have to sign the form, does he?

A. No, sir.

Q. So if you believe there was any question, you would not have recommended, would you, that the form be signed?

A. If I thought the rule -- if I thought I could prove that anybody moved for athletic purposes, I would not sign it, no, siree, or recommend that it be signed.

Q. Can you tell us whether or not before the season starts whether or not the coaches are required to read the Constitution and Contest Rules and certify that thay've done so?

A. Yes.

Q. So they are aware of the procedures and rules and the Constitution and Contest

rules of UIL?

A. They certainly are.

Q. And so the record is clear, would you tell the Court who probably knew Greg Jones and the Jones' family better, you or Coach Overton?

A. Oh, Coach Overton.

Q. Much better?

A. OH, Mr. Jones and I had not seen each other personally since 19779. I think we saw each other in 1979. When I was head coach at McArthur High School.

Q. If someone wanted to really know about the situation,

would you generally refer them to Coach Overton. This situation.

A. If you wanted to know something about the football team at McArthur High School, yes, sir, I would refer you to Coach Overton.

Q. And if I wanted to know something about the Jones' family or Greg Jones, would you refer me to --

A. Why, it would have to -- I would have to refer you to Coach Overton because I don't deal in that matter.

Q. In forming your opinions, have you relied a great deal upon Coach Overton's feelings, understandings, and his knowledge, in forming your opinions?

A. In forming my opinion? That's a -- kind of a tough -- I don't mean to infer in any way, but I form my own opinions.

Q. Okay.

A. I don't depend on him. When I took the investigation up, no siree, I relied on what I thought at that point and whether I would recommend it.

Now, I did ask him on several occasions if he had any doubts at that time about the signature and the facts that's been received and he said no. If he had said yes, then certainly we would have talked about it and so forth. But it would not have had a signature and administrator on there if I didn't thin it were correct.

Q. When a District Executive Committee considers a

transfer eligibility issue, should they consider the evidence and all of the evidence that the members know at the meeting, at the meeting itself?

A. Should they have? I'm sorry.

Q. Should they consider the evidence that people have, all of the evidence on a particular application at the meeting, all of it?

A. No, you're talking about an in-question transfer that someone that's been questioned and they should gather all of the information that you can possibly gather and they make a judgment on whether or not the youngster is eligible or not. If it's, you know, now, the time table, nor the procedure in which you investigate I suppose that would vary from district to district. I don't believe there are any guidelines to investi-

gation. I didn't find any, if there were.

Q. Okay, Mr. Nolan's general questions about the origanization (sic) of an Executive Committee, that's the same frame I'm giving to you, whatever information people have, should they provide it at the meeting so everybody can hear it at the same time?

A. Well, I think -- are you talking about origanization (sic) and the procedure in which a District Executive Committee operates?

Q. Just generally speaking, when you're considering a transfer request, if someone has information should they present

it to the whole body when they meet?

A. I would not agree with that. I think it should be done in the form of a letter or in some type of form because you could not hear everybody that had something to say in a District Executive Committee.

Q. I'm asking only about the people present, Mr. Lytal, the people present at the meeting, you know, the members, voting members?

A. Oh, the voting members themselves.

Q. Yes, sir, if they have information should they make it available?

A. I think they certainly should all be aware of what's going on, yes.

Q. Should anybody withhold information in order to achieve a certain result?

A. Certainly not.

Q. Okay. That would not be an impar-

tial hearing, would it?

A. It wouldn't be a factual hearing.

Q. Okay. And finally, should these District Executive Committee considerations, transfer requests, be done by impartial panels, should bias and prejudice play apart in it?

A. Certainly not. The procedure that's done now, I would consider basically in most cases, in all cases that I know anything about, that our body sits in impartially.

REDIRECT OF MR. LYTAL - BY MR. BOYD

Q. That's important to you, isn't it?

A. It certainly is.

Q. All right. Have you approved in your district transfer student requests where the sending and receiving schools have approved it and where the family has rented?

A. I don't think -- I don't think in a case where you -- a principal can answer this question better. Even though I sit in on the meetings and so forth, I would think that when a receiving school receives a transfer form, unless they've been alerted to something, that there's no check -- the only check that's made is within the district itself as to boundaries, as to where they live, so on so forth. not to what their status is, even though we have taken several steps in our own district to checking gas meters, things of this thing as to where

people live and things of this nature that we are obligated to do so. But, no, we certainly don't check everyone that comes in.

Q. And do you do that to verify that the residence has actually changed? Is that why you check those things, the gas meter and so on?

A. Well, yes, because of our in-district transfer, we have to check to where they pay their bills, yes.

Q. All right, sir.

MR. BOYD: Pass the witness, your honor.

THE COURT: Narrow it down, if you will, Mr. Nolan

district. Yes, I think it should be done on a basis of professionalism.

Q. Have you ever sat on a District Executive Committee?

A. No, sir.

Q. Do you think that the District Executive Committees possess information which either I kn0ow Mr. Boyd doesn't or which I might not because they're school people, special skills or expertise, knowledge that we don't have about dealing with schools and students?

MR. BOYD: Objection, to the extent that he doesn't say what kind of knowledge or skills he's asking about.

required to testify as to what he observed at the meeting.

THE COURT: As to the conduct of the fact finders and persons who were in attendance whom he may have recognized, their dealings with those persons who were the fact finders.

MR. LEATHERBURRY: Okay, I understand with that limitation then, Judge, our motion is denied.

THE COURT: It would be denied except that -- but it is limited to those inquiries, any inquiries beyond that would be -- would be granted in that respect.

MR. LEATHERBURRY: Thank you, Judge.

MR. BOYD: Thank you very much.

MR. LEATHERBURRY: May I go confer with Mr. McNabb? Do you want him as a

witness next. How about bringing him back at 2:00. I will report the Court's ruling. And we will be back at two.

THE COURT: Thank you, sir.

(Whereupon the witness was sworn.)

BILLIE D. THOMAS

having been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Ms. Thomas, will you give your full name, please?

A. You mean my married name or my --

Q. Yes, ma'am?

A. Billie Dorris Thomas.

Q. And where do you reside?

A. 3921 Shenandoah.

Q. Is that in Highland Park?

A. Yes, it is.

Q. For the Court's clarification, will you tell the Court what type of affiliation, if any, do you have with the football team, booster club or anything at Highland Park?

A. None whatsoever.

Q. Do you regularly attend Highland Park football games?

A. No.

Q. How many Highland Park football games do you think you've seen in the past five years?

A. Well, if they were in the high school play-offs, I probably saw them.

Q. At Texas Stadium?

A. That's the only time I've ever at-

tended.

Q. Have you ever attended games at the Highland Park?

A. Not until this spring at the innersquad. That was the only time I was ever in Hollinger Stadium.

Q. That was because your nephew was there?

A. Right.

Q. Could you tell the Court what the status of the residence was before the Jones family moved in.

THE COURT: You need to identify the address.

Q. On Potomac where Mr. Jones is living now?

A. 3856 Potomac.

Q. Yes, ma'am.

A. You mean you want me to tell you how?

Q. What the status was, what was it being used for.

A. Well, it wasn't being used, it was vacant until they moved in.

Q. Would you tell the Court how long it had been vacant?

A. Well, let's see. I think we have owned that house probably three or three and a half years. We originally bought it for our daughter and her husband to build a house there. In the meantime, they found a house they really liked over in University Park so they bought that house.

Q. All right.

A. And that was the status of the

house.

Q. Could you tell the Court how the subject matter came up of the Joneses using that house?

A. Well, I remember we were going to update the house. My husband was on the pulpit committee at the church to bring our new preacher into town and he couldn't find a house. He couldn't find a house, so I started back then updating the house, put a new air conditioning and heating system in it.

In the meantime, the last trip they were here they found a house, so I let the house sit. Didn't go on any farther with it. And then my mother, she is elderly and lives in Mesquite, I had applied for her to go to Presbyterian Village,

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and it takes some time, two or three years to get into Presbyterian Village one of the cottages there, so I thought I better go on with bringing the house up to date because I knew something had to be done about her.

In the mean time, I think it was last -- first of the last year sometime they called and said they were going to have a place for her. So I kind of let that slide and then I knew about the Jones situation. And about traveling so and from Dallas, and their son in dental school, and all of that. And I thought, uh-huh, that's a solution there for them.

Q. How did the subject get raised with the Jones family?

A. I don't remember exactly. I do remember saying to them I have a solution to your problem if you ever --

THE COURT: Let me ask her a question. Ms. Thomas, explain to us your relationship and your contacts that you have from time to time with the Jones family.

A. Larry is my nephew. He is my brother's son, and I'm his aunt.

THE COURT: All right. And what are the extent of the contacts that you've had with him over the last three years.

A. Well, we are a very close family. We see each other all of the time, and we've a very caring family, so we just see each other a lot.

THE COURT: During a year, would you come into

contact with him three, four times?

THE WITNESS: Probably more than that.

THE COURT: All right, back to the attorney.

Q. Could you tell the Court what you recall being the first time that you and Mr. Jones or you and anybody in the Jones family talked about the availability of this house?

A. Well, first, let me say this: They didn't know I had a house. I don't think the word house was mentioned until problem in July of sometime, maybe August of last year. And that's when I think I said something to either Larry or his wife about, or probably to him, that would you like to come over and look and see if you would be interested in moving over here and solving your problems.

Q. Why did you offer them a home?

A. Well, I -- I said that we're a caring family number. One, I was concerned about -- I knew that their car situation was atrocious at the time because they had not new cars and they were constantly breaking down and my sister-in-law and I talk a lot and she was concerned about it because they was always scrambling trying to get to and from work and Stephen to school. So, I knew that they -- I think the time that I said something about the house, I believe both -- two of their cars were broken down. And I had called over there and they said Larry was out working trying to get the car fixed so they could have transportation to and from Dallas

Q. Okay. What do you recall being the situation when you really openly talked about the Joneses moving in, almost immediately type situation? In other words, instead of just generally talking about it, when did it come to a head?

A. Well, I think it was -- I had moved my -- I was moving my mother after -- I moved her in September of last year, at Presbyterian Village, and I think it was around the first of September after I got her moved that I had Larry come out and have lunch with me and I took him over to show the house. And I said it's not finished. I've got some things to do. You go back and talk to your family and see if they would be interested in moving over here.

Q. Would you tell the Court if you offering of a house had anything to do with

whether or not Greg was a football player?

A. Absolutely not. Had nothing to do with Gregory football player. It was my concern for the family.

Q. All right. Could you tell us what deal, if any, you and Mr. Jones struck about the house?

A. Well, I told him that -- he was surprised, I think, that the house was there. And I told him that the way we could work this, if he wanted to, for him not to sell his house. You don't ever sell property if you want to accumulate any wealth. And I said what you do, you rent your house and you pay me what you get from the rent. And that's the way we can work it.

DIRECT OF MS. THOMAS - BY MR. BOYD

Q. For the Court's clarification, is your family involved somewhat in real estate in Dallas?

A. Yes, we are.

Q. Heavily involved?

A. Well, yes.

Q. Ms. Thomas, would you please tell the Court how many of Greg's football games you've been to, in oh, Junior, Sophomore year?

A. I never saw him play until the innersquad game.

Q. At Highland Park?

A. Right.

Q. Would you tell us where you grew up, Ms

A. I grew up in Mesquite. I graduated from Mesquite High School. I played athletics at Mesquite High School. I was on the basketball team at Mesquite High School.

Q. Did you ever play against Highland Park?

A. WE sure did.

Q. You like to beat them?

A. We sure did.

Q. Do you have some children?

A. Yes.

Q. Did any of them go to Highland Park High School?

A. No, they did not.

Q. Prior to the move by the Jones family to the house on Potomac had you ever spoken one way or another to Greg about his

football career or any of those things?

A. Never did.

MR. BOYD: Pass the witness, your honor.

THE COURT: Cross-examination.

Mr. Nolan, you may have as long as you want, as you know, in your examination. You're not limited.

MR. NOLAN: I'm really going to take very short time.

THE COURT: You may have at this time, none the less.

CROSS-EXAMINATION

BY MR. NOLAN:

Q. Mr. Thomas, when did you first know about the traveling situation?

A. Well, I knew about it, I guess, oh, around the first of the year or after maybe last of last last year, something like that.

Maybe -- probably in '83, '84, sometime in that time span in there.

Q. Late '83 or early '84?

A. Well, let's see, it's probably '84, something like that. I knew the situation was becoming intolerable with them.

Q. All right.

Q. All right. And how did you learn that?

A. Well, through conversation with my sister-in-law and with my daughter -- I mean my niece.

Q. Okay. And did -- and why was it becoming intolerable

in early '84?

A. Well, because of the car situation. They had old old cars. They didn't have new cars, and they had wear and tear of them. One was constantly broken down or two was constantly broken down all of the time because my sister-in-law said she was very concerned about the family. Now -- She said: I don't see how they make it. I don't know how they do it.

Q. Was there anything -- did any other problem other than cars breaking down that you were aware of?

A. Well, I was aware of Stephen trying to get to dental school and I know dental school was very hard and he needed his time studying. I knew that and I knew Barbara his wife worked late at night a lot of times.

Q. Had Stephen spoken to you at all

about this?

A. I was trying to think at Christmas time when we were together whether he mentioned about going back and forth to school. I don't really remember that.

Q. Now, you said you were a very close family, you see each other a lot. I didn't catch how often in a year that y'all get together?

A. Well, we get together all holidays, nearly all holidays, birthdays, particularily (sic) my mother's or his dad's birthday.

Q. Could you tell me how many times a year that would be?

A. I would say five, six times a year.

CROSS OF MS. THOMAS - BY MR. NOLAN

Q. Now, you first mentioned the house to Mr. Jones in July or August?

A. That's when the work "house" was used. I think it was early in the year that I had said I have the solution to your problems, if you want to come talk to me.

Q. When was that that you told him you had a solution to his problems?

A. That must have been oh, early spring, somewhere like that, because I was working on the house then.

Q. And did he talk to you about it at that time?

A. No, I don't -- because he didn't -- I don't know whether he was even aware of what I was meaning, because I didn't spell it out.

Q. Was there some reason that you didn't spell it out for him?

A. No, not really.

Q. In July or August, is that when you first spelled it out to him?

A. Yes, uh-huh.

Q. What caused you to spell it out then?

A. Well, at that time when I was saying I had a solution to the problem, I knew I was going to have to move my mother closed and I was hoping that maybe I could persuade to move them over. She would be living there close to me. When I found out that she was going to be moving to Presbyterian Village, then I

could say the house really and truly -- there was some conditions on the other one.

Q. Was the home available in the spring of 1984?

A. It was not up to date. I was getting it up to date. It wasn't finished.

Q. Did you know in the spring of 1984 how long your mother would have to live in that house?

A. I knew it would be a short term situation as soon as a pace opened up at Presbyterian Village she would be moving there.

Q. Something less than two or three years, that's the length of time?

A. Yes.

Q. And would they have moved in with your mother, was that you plan if they had to stay there?

A. Yes, that's what I was thinking, but I hadn't mentioned that to them, and I don't know whether it would be acceptable or not.

Q. And you talked -- you said you talked to Mr. Jones after you moved your mother into Presbyterian Hospital, is that correct?

A. No, she wasn't -- she's in Presbyterian Village. Yes, it was after the -- around the first of September when he came over and looked at the house we really got down to serious business.

REDIRECT OF MS. THOMAS - BY MR. BOYD

Q. And when did you move your mother into Presbyterian Village?

A. She moved over there around the first of September of last year.

Q. So it was just sometime shortly after that?

A. Uh-huh.

Q. Did anybody ask you to appear at the August 9th, 1985 District Executive Committee hearing?

A. Nobody has asked me a question until right now. This is the first time I've ever been questioned.

MR. NOLAN: I have no further questions, your honor.

THE COURT: Mr. Boyd.

REDIRECT EXAMINATION

BY MR. BOYD:

Q. Very quickly, other than the five or

six personal business with family gatherings, do you have an occasion to every talk to the Jones family?

A. Oh, yeah, I talk to them on the telephone. We talk every week or I do with my other nieces, nephews, my sister and brother-in-law, sometimes two or three times a week.

MR. BOYD: No further questions, your honor.

THE COURT: Anything else?

MR. NOLAN: No.

(Whereupon the lunch recess was had.)

A. I did not talk to Coach Qualls. Or Coach Johnson about it.

Q. Again, because of the rules?

A. I just didn't talk to them about it.

Q. Now, then, is it fair to say that any of those little discussions you had at the breaks, at the breaks themselves, were not on the record, in other words, the Court Reporter was not taking that down to your knowledge?

A. Apparently not.

Q. And also that as far as you knew the discussion that you were involved in were only with other members of the panel separate from the rest of the people there?

A. That's right.

Q. Did you tell those people who they could or could not talk to during the brakes (sic)?

A. No, I didn't, because it was an informal thing at the time.

Q. You think it's important for a student to get an impartial panel to consider a transfer request? Is that important?

A. I certainly think so.

Q. Free of influence?

A. Yes.

Q. Free of prejudice or bias?

A. Yes.

Q. Free of predisposition on how somebody wants to vote?

A. Yes.

Q. That's the most important thing in giving fairness and due process, isn't it?

A. That's right.

Q. Who do you recall talking to at a break about the subject matter of this hearing?

A. I don't recall one single statement that was made. I do not recall the context of any single statement that was made, so whatever we talked would have been really of no great significance because we were still listening to testimony.

Q. Did you talk with Mr. Thompson the other principal from Mesquite about the matter? This is the Greg Jones matter prior to the executive session that you went into

immediately before the vote? At any time did you talk to him about this matter?

A. I would not have talked with him personally. I would talked with him within a group of the seven of us.

Q. Now, the, in the group of the seven and outside of the executive session when y'all talked in general during breaks about the subject matter of this hearing were both lawyers present?

A. No lawyers.

Q. No lawyers?

A. They could have been standing right by us, I was not

Q. How many do you think?

A. Not very many.

Q. Ten? Don't you think you've had ten in five years?

A. I may have, but there's several years we don't have any.

Q. Yes, sir. And generally when you're involved as either the sending or the receiving school your testimony is Dr. Terry would give you a call just to make sure there's nothing wrong with the situation?

A. That's right.

Q. And as far as you knew he was the representative of the Mesquite Independent School District?

A. He has been, but, you know, they don't call me when they change things.

Q. Have you ever received any calls from anybody else up there at the Independent

School District, Dr. Poteet, or anybody else regarding whether or not there's anything wrong with particular student's requests?

A. No, sir.

Q. Okay. Do you think it's important for the school district itself, Mesquite Independent School District to check out these previous athletic participation forms with the sending schooling or the receiving school, is that important?

A. Well, I would think so.

Q. Okay.

A. Oh, it depends on if it's a matter -- I sometimes go a couple of weeks without talking to him.

Q. Sometimes every day, every few days?

A. Every few days.

Q. How long have you known Coach Johnson?

A. Well, probably now 22 years.

Q. Do you consider him your friend?

A. I consider him, well, a former boss, and, yes, I consider him a friend.

Q. Have you every worked together with him other that in your hierarchy right now between principal and athletic director?

A. No.

Q. Never been to the same school or anything?

A. No, sir.

Q. Had you ever been at District

Executive Committee meetings before?

A. Yes, sir.

Q. And are you aware of any other situations in District 9 AAAAA where the sending and receiving schools have approved the child's participation when the Executive Committee considered it they rejected it? Are you aware of those situations in 9 AAAAA?

A. Where something has been rejected?

Q. Where it's been approved by the sending school and the

receiving school for the student?

A. Uh-huh.

Q. But later rejected by the Executive Committee. Have you ever seen that happen before?

A. Not to my knowledge, no.

Q. Have you ever been to an Executive Committee meeting where only principals were sitting?

A. No, sir.

Q. Did you think that was a little bit strange?

A. Well, I knew it was something that had to do with something else besides what the superintendents would do.

Q. And didn't you think it was strange that the athletic directors were sitting in the audience rather than voting?

A. I -- not strange, no, sir, they're

usually there. I don't understand the point of your question.

Q. Have you ever seen an athletic director or superintendent defer when they're at a meeting to vote on a transfer request, defer to a principal instead of one of them?

A. No, sir.

Q. That's unusual, isn't it?

A. Yes, sir.

Q. If Mr. White said in his testimony that he learned that this was a transfer eligibility issue to be considered by your group at a District Executive Committee in the car, does that refresh your recollection at all?

not be necessary to be called as a witness, would you have been one of those panel members?

A. No, sir.

Q. Did you chat at all with Coach Johnson after initially coming in at any of the recesses before you voted? At any time?

A. I don't remember.

Q. You could have, but you do not remember?

A. Right. I don't really think I did because it was very cold in that room and seems like every time we had a recess, I went out the back door and stand in the sunshine, so I don't think I did.

Q. Is it your testimony that Coach Johnson never made it outside to the sunshine, is that your testimony?

A. That's right. Where I was at.

Q. How long have you been attending or in presence at District Executive Committee meetings where transfer requests are considered?

A. Ten years.

Q. Have you ever seen one before where sending and receiving schools have recommended it and the panel or Executive Committee have denied it?

A. No, sir.

Q. Normally students don't have to put on witnesses and give testimony and bring in witnesses and all of that, do they, normally?

evaulation?

A. That's the information I was talking about while ago when I sign these transfer release forms. The information is obtained through the coach, and I ask them what happened and he tells me if it's legitimate. I sign the release.

Q. In fact, in your administration, you don't have time checking everything the coach checks into, do you?

A. Yes, true.

Q. So routinely you approve it if the coach does, right?

A. Correct.

Q. Who was it that called Highland Park from your school, if you know, to talk to them about the situation, with this family situation, with this child? You don't know?

A. I do not know.

RECROSS OF MR. CHUMLEY - BY MR. BOYD

Q. Did this child that went from Garland to Highland Park, he was not subjected to an evidentiary hearing, was he?

A. I don't think so.

Q. He didn't have to bring in the coach to testify and he didn't have to bring in anybody else to testify, did he?

A. No.

Q. Again, if this student was moving from Garland to Highland Park and moving into a rental and was moving a rather short distance and could still go out for Garland, do you know why he didn't also have to have an evidentiary hearing, do you know?

REDIRECT OF MR. CHUMLEY - BY MR. NOLAN

A. That I, you know, only got the full information about this after the -- after the hearing.

Q. And when someone -- do you recall who asked Homer Johnson why we were doing this?

A. I don't remember, I don't recall.

Q. Do you recall that someone did ask him that, is that what you said?

A. I just remember that we talked about it. I don't remember if the question was asked specific.

MR. NOLAN: I have no further questions.

MR. BOYD: Pass the witness.

THE COURT: All right then the witness may be excused. Mr. Chumley, you are excused.

We're going to visit a minute, so you can be on your way, if you have your own independent transportation.

REDIRECT OF MR. CHUMLEY - BY MR. NOLAN

(Whereupon the case was recessed until September 20, 1985, at which time the following proceedings were had:)

SEPTEMBER 20, 1985

THE COURT: We are ready to proceed.

MR. BOYD: Your honor, at this time, the Plaintiff would call Mr. Larry Jones?

THE COURT: Mr. Larry Jones. The witness has been previously sworn, I believe?

THE WITNESS: No, sir.

THE COURT: All right.

DIRECT OF LARRY JONES - BY MR. BOYD

(Whereupon the witness was sworn.)

having been sworn, was examined and testified as follows:

LARRY JONES

DIRECT EXAMINATION

BY MR. BOYD:

Q. Mr. Jones, will you tell the Court if you're the same Larry Jones that is here representing your son Greg?

A. Yes, sir.

Q. Will you tell the Court where you presently reside?

A. 3856 Potomac Street in Dallas.

Q. How long have you resided there?

A. Since November of '84 -- about the 20th or so of November '84.

Q. Okay, sir. And if I could ask you if you would please answer just a little bit louder

Could you tell the Court was surrounded your move or the circumstances that caused you to move to Potomac?

A. Centered basically in our family needs at the time. We were -- we have three sons, one of which was a student enrolled at the Baylor Dental College over in Dallas. And I also have a student at Texas Tech University in Lubbock and obviously Greg Jones who is now a senior in high school.

And when Steve came back from Baylor University and was accepted in the dental school he moved back home and we started commuting into Dallas every day.

My wife and I obviously had already been commuting into Dallas and we put another car on the road and he started coming into Dallas every day with us in his own vehicle. But I mean three cars into Dallas. And as we progressed in that year, things started to get a little hectic as far as the family was concerned.

Q. What year are you talking about this time?

A. Well, let's see, he enrolled I believe in the fall of '83 is when that would have been, starting at that time. And as we progressed in that first year, never having had a child in dental school, we didn't know what to expect, didn't know the schedules, demands, et cetera. And as we go into it, we found that our schedules were not compatible, that we were running around and starting to

get strung out up and down the road all of the time.

He had also entered in the extra curricular activities at the school being president of his class when he was in the first year there. That dictated that he be back at school, so we had traffic and cars and time and confusion, and it got to be where I was just, you know, felt like I was just running up and down the road and we were strung out like a bunch of gypsies or something on the road.

Q. All right. Why was being strung out on the road like a bunch of gypsies a problem with you and your family?

A. Well, we started to -- as problems arise, mainly

commuting problems, that is with the vehicles, as they arose, I would spend time out trying to keep some cars on the road so we can get back and forth in and out of work.

Q. What are you talking about you would spend time?

A. Well, I mean, you know, if the car went down, I would be out making the repair myself. I wouldn't send it into the shop and try to have a mechanic work on it due to cost factors, and so I just took care of it myself.

Q. What kind of cars did you have, tell the Court.

A. We have a '72 model. A '75 model, a '77 model, and we had an '80 model and an '83 model. And one of these was in Lubbock with my other son, so we had the other cars at home.

Q. All right sir, Did the excessive traveling other than the number of cars on the road, did that affect your family in any way?

A. Well, we never had any time together basically. Everybody was just running in all directions, and we were always, when you hit the door, there was something to do and like to get ready to go again. We never could really start settling down in the family. We were beginning to have some tension. For instance, Steve, I began to question him: Do you really need to go back to Dallas tonight, you know, can't you do something here? And he, you know, it got along the lines of where we were --

Q. Why would you be concerned about that?

A. Well, economics, basically. We were running like I said about a hundred miles a day average travel for the three automobiles, five days a week, sometimes six. Steve would be going back and forth on occasions, so that was a concern. Any time one of them left, I got to where my wife said, she said: Please don't think about just the gasoline, you know.

Q. Did Steve have any particular problems with even getting back and forth at any time?

A. Occasional we had -- when an automobile would break down we would scramble to find Barbara a ride or he would try to ride with me or there's no public transportation out there that was convenient for us to use in Irving, from Irving to Dallas, and there were no dental students per se in the area

where he could call and catch a ride. And I didn't have anybody to ride with per se.

Q. Well, Mr. Jones, why was this all of this traveling of particular concern to you? I mean a lot of people have to travel.

A. Well, I treasure my family life. We are a close family as my aunt indicated, and I'll do what I can to hold my family together.

In this day and age, I think we've got enough problems you know, attacking the family and deterioration of the family unit and seeing these kids that don't have parents that do care, and not showing interest and concern for their well-being to

encourage them to create an environment where they will feel comfortable and want to learn, want to achieve, and want to do what you want them to. And I'm proud of my kids for their accomplishments and I'll do whatever it takes to get them to achieve to the best of their ability in whatever they do, whatever they choose. It will be their choice, but I want to encourage them, and I will try to create an environment for them that is conducive to their achievement.

Q. All right, sir.

Getting on toward the fall of 1984. Was Steve having any more problems, more particular problems when he started having night labs?

A. In August, late August there just as he was going into school, we had a car -- let's see, one of the cars at that time was

in the body shop and it was down, so I said: Steve, we'll try for you to ride with me till we can get you some transportation.

He had tried to drive the older car, the '72 model, and it started acting up or he got stranded down here a couple of times. I had to come out at night and get him and he left it on the side of the road once and came on home. So we said: Well, that won't work. I'll just take you and we got into this position of where he would ride into the school with me and then I would try to pick him up after work.

Well, on many occasions he would come out and he would

say: Dad, I've got to stay, I've got a lab, and it's going to be 7:00, 8:00 or whatever the time frame was. I said: Well, what are you going to do? He said: I'll call you. Sometimes he would call and he would say: I'm spending the night at wherever.

I really didn't know sometimes for sure. He just had three or four friends and he would try to spend the night. And sometimes when he anticipated he would be late, he would even take a pillow and a blanket from home and put a change of clothes and take them with him as he went out the door.

Q. Was that acceptable for you as far as a father in raising a child?

A. It bothered me. It bothered me a whole lot. I didn't like to see that. And it was bad because I could not provide him with the atmosphere he needed. I mean dental

school is tough. I mean you just don't say: I'm going to dental school and get in. And I'm proud that he got in. And I want him to achieve, but I felt I was negligent in that area at that time because I could not help him do what needed to be done.

Q. At or about this time was there any change in circumstances as far as your family was concerned about how you were going to handle the problems?

A. Well, we had been discussing the problem essentially since probably he got into dental school, really got into it probably early spring of '84, that would have been as he went

into the second half of that first year. And he began to talk, because I obviously had, you know, begun to feel the pressures and such as that on this communicative problem we were having.

Q. What kind of problems?

A. Commuting, I mean, not communicating. And time was becoming more valuable to us. I mean we're driving, you know, an hour and a half, two hours a day out of our lives.

Q. Okay, well, how did you decide to try to resolve it?

A. Well, we discussed several alternatives. And in the meantime, while we were in the process of discussing this, my aunt, and we're in contact, as she said on a regular basis, we're a close family and keep up with each other. She doesn't just call us or

visit us, she keeps in touch with the whole family. She called and she says: How are things going? What's this?

Well, occasionally when she would call I would be outside under the hood of the car checking the car or whatever it was, and so one time she called and I answered the phone. We were talking about what's going on. And she said: Well I have a solution to the problem. And I said: Well, fine.

I didn't pursue it at the time because I thought she meant loan me some money or something like that and I didn't need any more debt at the time. And that was -- went out of my mind.

So as we progressed, she again, and through that

semester she probably -- we had conversations, I don't know how many times, she again approached me with: I have a solution to your problem.

And then about probably August, I guess it was, she finally told me the solution was a house. And I said: Well, you know, what are you talking about? She said: Well, we will -- I have a house over here that's vacant and I can make it available to you.

And I said: Well, I don't know if I can afford your house. She said: Well, we'll get together and we'll talk about it. We will discuss the arrangements necessary for you to come over here. She said: There is away you can move into this house.

And then I --

Q. Would you speak up just a little. It's hard for me to hear you.

A. And I think it was about toward the middle of September, first couple of weeks in September, I went over and had lunch with her one day and she did take me to the house and she showed me the property and said: This is it. And this is where it would be and we can work out a mutual agreement. You'll be a tenant and this will help solve some of your problems.

And so we went back over to her house, sat down, and we discussed how I could move into that house.

DIRECT OF LARRY JONES - BY MR. BOYD

Q. Were you aware at the time how that house was being used or what was going on with it?

A. I didn't even know about the house.

Q. Okay.

A. I had no knowledge of the house.

Q. Did it appear to you somebody was living in it when you went to it?

A. Well, they had refurbished it. They were in the process and had also completed refurbishing the house, interior, exterior, they had done painting, hung some paper and put some new carpet in.

Q. Would you tell the Court what you did after you had lunch with your aunt. She showed you a vacant house that they had that she was willing to make available to your family.

A. Well, during that -- after the lunch

and after we went back to her house we sat down and she said: Now, you can rent your house in Irving. I don't want you to sell it. You can rent it. We'll take the rental off of your Irving house and you can use that as the rental base over here.

And I said: Well, I don't know if I can rent my house. I don't know what I can get for my house, whatever, and would that be satisfactory to you?

And so we sat down and I went back and did some research and found out a figure and called her back and I said: Here's, you know, kind of what's in the market over here. She

said that will be fine with me, you know, we can live with that.

Q. Would you tell the Court your house in Irving, will you describe it just briefly.

A. My house in Irving is a four-bedroom brick home.

Q. Three what?

A. It's a four-bedroom brick home, and two and a half baths and with a den, living room, dining room.

Q. A nice home?

A. It's a nice home, right.

Q. Would you tell the Court what your payments were at that time in the fall of 1984 on your house?

A. On my house.

Q. On your house?

A. My payments at that time were a dollar under $200.00 a month, I believe, 198

something, I believe.

Q. 198 something?

A. Yeah, in that --

Q. And what were you able to rent it for?

A. I rented it for $1,200.00.

Q. Okay. Would you tell the Court what kind of return you considered that? Was that --

A. Well, on the original investment, that is the price I paid for the house. It's upper of 38 percent or son on equity in the house. It's a little better than 15 percent.

Q. In the fall of 1984, if you had sold your home, could

you tell the Court if you had anywhere you could go and 15 percent on your money?

A. Not that I'm aware of.

Q. Even today, do you know anywhere you can take money and go get C.D.s paying 15 percent?

A. I'm not aware of any rates that high.

Q. And tell the Court whether or not there's any inflation factor that's raising the value in your neighborhood in Irving?

A. Well, obviously the value of the home is increasing, that's the reason, you know, you hold on to the property. Appreciation in the property, return on the investment, and you're building equity.

Q. Will you tell this Court what your one, or not one, but what your largest assets are.

A. My largest asset is obviously my home.

Q. Do you want to sell your home?

A. No, sir, I don't.

Q. Was there any other reason you didn't sell your home?

A. None at all.

Q. Why would you acknowledge or value your Aunt's suggestion that you not sell the house? Why? Because she's friends or what?

A. Well, without delving into her personal business, they're in real estate virtually nationwide and they have been

for -- since what early -- late 50's, I guess.

Q. For the Court's information, Mr. Thomas used to be Trammel Crow's partner in the warehousing business and they separated a few years back?

A. That's right. They have properties as I said nationwide. And they know the value of real property.

Q. All right. Did you work out an arrangement with your Aunt?

A. Yes, sir, I did.

Q. Will you tell the Court, if it's any different than what you've already testified to, if there's any other --

A. No, what I told her, called her and told her the figure and she said that will be fine, we'll just use that amount as the basis of our rent over here. And I said okay. And

she said when would you like to move in? And by that time the six weeks periods were running for Greg. Meanwhile, Steve had come in and he said this arrangement is not going to work. And he said I don't know what we're going to do, but it is not working for me.

Q. What was his problem?

A. Basically, he didn't know where he was going to be sleeping at night sometimes, just, you know, strung out and down the road again and he said: I don't know if I'm going to have to borrow the money or you're going to have to borrow the money, but we're going to have to do something to alleviate this

problem.

And that was shortly before I went over and looked at the house or right after. I don't remember when. It was in the same time frame in there. And I told him, I said, by then I had already told Barbara and I told him, I said: I think we have a solution, Steve. And I told him that we haven't got all the details worked out yet, but it looked like it was final and looked like we would be moving. And he said where is it? And I told him. And he said is that near the school? And I said it's near the school. It's near work.

Q. By the way, will you tell the Court whether or not your -- you had to pay any rent?

A. Oh, I didn't have to pay a dime. I mean she -- she would have opened the door

and I could have moved over there free as far as that goes.

Q. Will you tell the Court why you agreed to pay.

A. I just think it's a business arrangement with her, and I don't -- I mean you help your family, but I don't feel comfortable moving into a house and saying: I'm riding free. When I have income that I can apply toward paying, paying my own way.

Q. All right, sir. Insofar as Greg is concerned, you've told the Court about Stephen. Did you have any concerns about Greg in connection with your anticipated move to Highland Park?

A. Yes, sir I did.

Q. Tell him what those problems were, if any.

A. Well, Greg was obviously leaving his group of friends he had gone through school with and participated in various activities with and this was, you know, a concern on me as to how would he accept the move, giving up his friends and leave?

And so I sat down with Greg and I did not tell him where the house was at that time and I said: Greg, you know, here's the deal. We can move and it will get us closer to work and it will get Stephen closer to school. If we have car problems we'll have public transportation available at the end of the block. And I said: I want you to think about if I ask you to leave Irving do you have any problem with that?

And he didn't say anything at the time.

I said now, you know, think about it and let me know. Well, I believe it was the next day or so we got back together. And he said: Dad, you know, he said depends on where we move. And I said: What do you mean? He said: Well, if we move real far away, he said I might have a problem with leaving and just cutting off everything. He said, you know, Chris, there's a friend of his at McArthur had moved up to Coppell just up the road from Irving, and he said, you know, Chris moved and we still get together, we still talk on the phone and so on. And another friend of his had moved to Grapevine. And he said we're still able to see each other and so on. He said: Now, if we're moving real far away, I might have a problem with it, but if I

can still contact my friends and come back to Irving occasionally. He said if it will help y'all out and if it will get us close to where you need to be and so on, then, you know, I can handle that.

Q. Now, other than discussing that with Greg could you tell the Court whether or not you were going to move anyway?

A. Oh, the decision was made. I mean I was moving.

Q. Where there any concerns that you had in connection with Greg's school activities about the move?

A. No, there wasn't. Well, the type student he is, I felt like going into the academic environment at Highland Park High School which has a national ranking, that he could improve his academic performance level, that is by the type of curriculum they have

over there and the requirements of this school. He would be put into an achieving environment, and into an environment when he expected to do something.

Q. Was there anything wrong with the environment he had at Irving?

A. Nothing at all. Nothing at all. But the reputation that Highland Park carried as far as academics were concerned, was a little stronger reputation than Irving. Irving was a fine system, and he was doing well in the Irving system.

Q. Would you tell the Court what kind of student he was.

A. Well at Irving he was National Honor Society and at Highland Park he's also National Honor Society. We did find the

immediate difference between the two systems when we moved. He was three to five weeks behind in every course when we went into Highland Park.

Q. How did -- what kind of extra curricular activities was Greg participating in when you moved?

A. He was in athletics. He played football and he played basketball. He worked on the annual and he was in the FCA, Fellowship of Christian athletes.

Q. All right. At the time you were actually moving, will you tell the Court what sport, if any, he was participating in?

A. At the time of the actual move he was on the basketball team and he was in the top six players in the rotation of the team on the varsity for McArthur High School.

Q. Did you realize that when you moved

that he would be leaving a starting position on a varsity sport team?

A. Yes, sir, I did.

Q. Did you realize that he might not be able to play on the varsity team at Highland Park?

A. Yes, sir, I did aid discussed that possibility with him.

Q. Did that concern you at all?

A. As far as the move?

Q. Yes, sir. That he was --

A. On, no, sir.

Q. --having to leave. I mean that had no bearing on

whether or not we were going. We were going. I mean I, you know, he was on the starting rotation for the varsity basketball team and we moved.

Q. Do you recall Coach Overton's description of the varsity basketball team, the program at McArthur?

A. It's very strong.

Q. Well, do you recall his description?

A. I don't remember the specific terminology that he used but --

Q. How about the success rate or the success of the team?

A. Very well. He mentioned a 31 and 0 season and district champion, I believe they were last year, I don't know whether he mentioned that or not.

Q. Could you tell the Court whether or not basketball was important to Greg?

A. It was an important sport to him, yes. As a matter of fact, I believe he's probably a better basketball player in my opinion than he is a football player.

Q. In connection with the move, obviously there was a transfer of school records from one school to the other?

A. Yes, sir.

Q. Would you tell the Court how you went about, your family went about transferring Greg from Irving McArthur to Highland Park. Just describe what you did.

A. Let's see, it was on a Friday afternoon, and I went to

the school about -- that would have been I think the 16th of November.

Q. You're going to have to speak up just a little bit.

A. It was on a Friday afternoon. I think it was the 16th of November and I went to the school to talk to Coach Overton. My wife had requested the same day that Greg's paper work be started to take him out of school. I went and talked to Coach Overton, told him we were leaving. And he said -- he was taken aback when I told him. He said he hated to loose Greg, he was a fine young man. He had enjoyed him in his chemistry class; enjoyed having him on the team; and they would miss him.

And I said: Well, you know, we're going to miss you and we appreciate what you've done and the help you've given him as an

individual and a coach and a teacher. And then he said: Well, is Greg going to participate at Highland Park? And I said: Well, I really don't know. I don't know what their program is and I don't know how they feel about Greg being a senior next year if he would even be considered in Highland Park.

And he said: Well, you know, Frank Beavers has got a good program over then I would like to see him try to get in the program. And I said: Well, what's required, you know. And he said: Well, you have to sign a transfer form. He said I don't have one, but I'll get one.

And then he went on to talk about Coach Beavers and

what type of person he was. I had never met Coach Beavers, I didn't know anybody in Highland Park affiliated with the schools or the athletic program over there. And I said: Well I don't, you know, I don't know the man, I don't know what's ahead or anything else. And he said: Well, I'll call Frank about the transfer when we the paper down and they'll know he's coming. And we reminisced, I don't know how long it was, we just talked.

Q. If I can ask you a question. Had you ever had any -- any antagonism at all with Coach Overton?

A. None whatsoever. Coach Overton came into McArthur at a very -- when football was on the bottom. I think they had gone either 0 and 9 or 0 and 10. I don't know what it was. The program was actually devastated. And he came in and I first met him when Greg

was playing basketball. He was all fired up over that 30 and oh season and he was out there going to go for basketball. And Coach Overton was in the gym and I went in to see Greg play a Freshman in there and we were sitting there I didn't know the man and he came up and introduced himself. He said: I'm Coach Ray Overton, the new head coach here at McArthur. And I said: Well, welcome. And we sat there in the stands. He kind of told me a little about where we came from and he said: Do you have a child that plays athletics? And I said: Well, I happen to have one on the court right now. I pointed out Greg and he got to watching him.

Q. All right, if you can tell me from that point, when you first met Coach Overton, how many times do you believe since that initial meeting in the 9th grade when we already know Greg was not participating in football, how many times since that 9th grade have you talked directly with Coach Overton at all about Greg's performance as quarterback or football players, if ever?

A. The time I checked him out of school as far as a specific conversation concerning Greg and his playing and his abilities and such as that.

Q. Okay. Will you tell the Court whether or not you ever had anybody else make recurrent telephone calls or encouraged anybody else to contact Coach Overton to urge that your son had more playing time or anything like that?

A. None whatsoever. The only time that bject was ever brought up directly that I'm ware of was we were at this open house at e school one night and Coach Overton was anding there and we were talking obviously out football and he said he was glad Greg cided to come out. He had actually asked eg to come out and try out for football. said he was glad Greg came out. My wife ys: Well, how do you handle the team as r as who gets to run the first team, who ts to run the second team or whatever, you ow, how do you do this? He said: Yes, 'am, I do. He said I take them, Greg will a quarterback, I take my quarterbacks and have them each one run with the various

teams, the exact number of snaps my coaches keep --

Q. That's the conversation that Coach Overton talked about earlier?

A. That's right.

Q. Other than that, have you ever --

A. None.

Q. Have you made any complaints to anybody in Irving athletic chain including principals, athletic directors, or anything else that your kid wasn't getting to play enough ball?

A. None that I'm aware of.

Q. I would like to take you back to the time when you visited with Coach Overton when he already told you about the transfer form. Will you tell the Court what happened next in getting Greg sent from Irving McArthur to Highland Park?

A. Well, at the same time I was talking o him, or I don't know whether it was xactly the same time, my wife had requested he forms be prepared to withdraw him from chool. They said: We'll have to get his rades together and we'll have to do the aper work and you can pick those up on uesday. So, I went back home and she said: ell, you know, we talked about -- she said hat do we need to do with Greg? What did oach Overton said and I reviewed the conver- ation briefly and she said: Well is he oing to try to participate at Highland Park? nd I said: Well, Coach Overton wants him o. And you've got to get a form from him hat he'll sign and he didn't

DIRECT OF LARRY JONES - BY MR. BOYD

have it in the office today so you'll have to pick that up when you pick up the paper work.

Q. All right. Was there anything else done on that Friday, to your knowledge?

A. No, after I left, you know, we didn't go back out to the school or anything.

Q. Okay. Then on Monday, the following Monday, would you tell the Court what you know of happening?

A. Monday nothing happended because the paper work was in the processes. They told her it would take -- take them through Monday to get it done, she could pick it up Tuesday.

Q. At what date did you actually enroll Greg in Highland Park?

A. On the 20th. I believe it was the 20th, I think, of November.

Q. Was it a Tuesday, the 20th?

A. It was a Tuesday. I believe it was the 20th. We had moved that weekend, finished moving. Gotten in the house that weekend.

Q. So, you had not received any previous athletic participation form before you moved?

A. No.

Q. So you didn't didn't know whether Coach Overton actually in the end would approve it or the administration would approve it or Highland Park would approve it?

A. Not until the day that she walked into Coach Overton. Well, she went into the principal's office is where it occurred, I believe, and that's where they were when Coach Overton signed it and explained it to her.

Q. For the Court's clarification, is it your testimony the move was well prior to the receiving that form?

A. Oh, yes, yes, uh-huh.

Q. Had you been promised anything by anybody that Greg would make the team or be able to play at Highland Park at the time you made the move outside Coach Overton, anybody else promise you anything?

A. I didn't know anybody in Highland Park. I mean I knew my relatives and they didn't have anything to do with the team. And I had a personal friend over there and

called him and talked to him about the academic program. Well, my question to him was: Given the opportunity to move to Highland Park -- he had moved I think four years before -- would you move into Highland Park?

A. And he said definitely, great environment. Great academics. We have some good kids over here. We have our problems as everybody else does. He says it's a fine environment to raise your kids. We didn't talk about, you know, anything else, football. That was about a week before we moved.

Q. The day that you enrolled Greg the 20th, that Tuesday, will you tell us what the proximity of that date was with

picking up all of the records?

A. The same day. Barbara went over Tuesday morning to McArthur, picked up the records, picked up the PAP form, and visited with Coach Overton. Had to take the form down to Mr. Lytal who in turn rereviewed it and had Cecil Green sign the thing.

Q. Have you ever had any indication that anybody from Highland Park had contacted your son about the possibility of playing any sport at Highland Park High School prior to your families actual move that weekend?

A. None. I don't know of anybody that even knew him. None.

Q. What next occurred after he got enrolled all of the other records were submitted, what next happened with the athletic potential that Coach Overton was encouraging?

A. On the day of enrollment they were

in the -- I wasn't there my wife took him up.

MR. NOLAN: Your honor, if he wasn't there then I would ask that he not testify to it.

THE COURT: Sustain your objection.

Q. I'm asking only your personal knowledge, what you --

A. Personal knowledge. I don't know.

Q. Okay.

A. As far as what went on on that Tuesday.

Q. Have you heard various witnesses testifying about the

subject of recruiting through this trial?

A. Oh, yes, sir.

Q. Do you know of any facts that indicate that there was any recruiting at all in this case?

A. None whatsoever.

Q. And just for the clarification of the Court is your Aunt Ms. Thomas acknowledged as a big Highland Park High School booster over there, or fan?

A. She could care less about Highland Park football team or whatever.

Q. All right. What was the next that you were aware that there was some activity about Greg and possibly participating in some sport at Highland Park? For instance, let me direct you to basketball. You said he was on the varsity team at Irving McArthur. What was the situation at Highland Park about

basketball where he was successful?

A. After Barbara had been up there on Tuesday, I don't recall if it was maybe the next day of the following day, I got a call from Bo Snowden, Athletic Director at Highland Park High School. He said: Mr. Jones, I would like to talk to you about this transfer. He said: I don't have any problem, but I need to talk to you. So I didn't know at that time what, you know, what the subject was going to be or what we were to talk about.

Q. Were you called in person?

A. Yes, sir, so I went to his office and sat down and he introduced himself and he said it is our policy in Highland Park that we discuss with the parents these forms. And he explained the form to me. The purpose of the form: to avoid recruiting, to avoid transferring for athletic purposes. Did I understand those terms, et cetera? And I said I did. I knew exactly what he was talking about. And he said: Now, I'm going to have to ask you some personal questions and I don't want you to be offended. But he said how did you happen to wind up in Highland Park? He said I notice on the form, and I believe there's a place there says we did not own the property. And I told him how we wound up in Highland Park. And he says: Do you reside and you have permanent residence in that house?

A. And I said if you mean have we left Irving, yes, sir, we have. He said: Have you got anything over there, you don't have a bed or a hot plate or anything in Irving or anything like that where you're running back and forth?

A. I said no, sir, we're in the Highland Park house. He said: Do you know anybody over here in Highland Park that talked to you about Greg, that talked to you about his abilities or encouraged you to get over her and want him to play football or whatever at Highland Park? I said: Well, I happen to know two ex-coaches at McArthur, but I don't know them. I know their names, they were over there, one of them was

a wrestling coach, and the other one was I think he was a Freshman or Junior Varsity baseball or basketball and football. Anyway, but I didn't know them personally per se. I knew of them because they had previously been at McArthur. He said: Have you had any contact with them? I said: No, sir, I haven't. He said: Has anybody contacted you.

And he drilled me and he went back over the residence. He said: Now, you are living in this house. I said: I am living in this house. He said: If I drive by there tonight, knock on your door at 10:00 you're going to come to the door? I said I certainly am. And he said: Now, I don't want to be offensive to you, but he said I have to be sure because I'm going to recommend this to the District Committee and I'm going to go in and talk to Dr. Powers, and I'm going to

explain to him why this transfer should be approved. He said: I've talked to Ray Overton and I find no problem. Ray says the same thing you're telling me and the basic reasons or need, family need to get this situation rectified for your family.

Q. Okay, after, if I can take a shorthand, after your conference with Mr. Snowden what was your next step in connection with at all with any athletics, not just football, anything?

A. Well, during that meeting he asked me, he said: Would Greg be interested in basketball? And I said: Well, he's interested in basketball, but the 30 day rule, if you move in,

you've got to wait 30 days to play was in effect and by this time he would have been on the team they were already started, such as that. I said: Plus, we don't know how his academic load will be here at this time. We don't know what demands will be on him.

Q. Were you concerned about the academic load that he'd be taking?

A. Especially when we found out where he stood in the classroom at that point.

Q. What did you find out?

A. Well, he had makeup work he had to do in his subjects in order to get current with the curriculum over there.

Q. Did that makeup -- are you telling the Court that makeup had an effect on your attitude towards his participating?

A. Oh, yes, sir, because I knew he needed to be studying, and I knew he needed

time with the books and I asked him, I said: Would you be interested in trying out? He said: It's too late. They've got their team set. And he said: I don't know about what's going to be required of me in my studies.

Q. All right. Did he make any attempt to go out for basketball where a sport in which he had previously been a starting player at Irving McArthur?

A. No, he didn't.

Q. What is the next incident that you can recall in connection with the previous athletic participation form and any

request for his eligibility to participate in UIL activities, particularly the football program which was coming up at Highland Park?

A. We went to an open house and I don't remember how long after that it was at the school and I saw Bo Snowden at the school and asked him, I said: Is there anything else I need to do? And he said: No, we've got everything covered. He said: I've got it all taken care of. And I visited with Dr. Powers and everything is in order. We're on the line with you and McArthur is on their line and everything, you know, we're ready to recommend it and it should be approved. He said I don't see any problem with it at all.

Q. What's the next, that you do recall as far as the process after that meeting?

A. Well, the period of time elapsed in there and, you know, it was just kind of on

hand, I guess, I didn't understand whether they were going to present it because that was never said. And I was one afternoon sitting in my desk in my office and phone rang and it was Greg.

And I knew when he said "Dad" that something was wrong. I couldn't figure what in the world had happened and he said: Dad, they said I can't play. And I said: Who said you can't play? And he said: The committee said we moved so could play football. And I said: What are you talking about? And he said: Well, Coach Beavers called me in his office today

and told me and showed me the letter from Dr. Poteet, and it said that we didn't sell our house and that Irving said that it wasn't necessary, you know, some general terms, and I said, Well, where are you Greg? He said: I'm at home. And I said: Well, I'll be right home.

Well, the day before we had gotten a receipt for a registered letter in the mail and we didn't get in before the post office closed so I hadn't picked it up, and that turned out to be the letter of notification.

Q. All right. Prior to, I think the record is clear, but prior to receiving this letter that your son had been determined in eligibility, had anybody from the District Executive Committee given you any indication they were even going to have a meeting to consider it?

A. I didn't know anything about a meeting period.

Q. Did anybody from Executive Committee invite you in any way to the meeting at some indeterminate time in the future?

A. No, never mentioned to me.

Q. Okay, would you tell the Court if you would have attended the meeting if you had been given a notice?

A. I would have. I would have.

Q. If the committee had wanted Coach Overton there, would you tell us whether or not you would have made those efforts to get him there?

A. I certainly would, if they felt it was necessary. I

certainly would.

Q. What was your reaction to finding out that the committee had not invited you or the coach or anybody else to the meeting to talk to them had denied your son's eligibility request. What did you do?

A. Well, initially I said -- went home and talked to Greg.

MR. NOLAN: I have an objection. I'm sort of anxious as to that, too, but there's a fact not in evidence in that question and that is once you found out they hadn't contacted you, the coach, or anybody else, and I don't think we've got his knowledge at that time that he knew what occurred at the meeting. I think what he testified to is I didn't know anything about it.

THE COURT: You're ahead of

yourself. Sustained.

Q. At that time after you learned that the committee had rejected the request for your son's eligibility, and at that time when you had not been told that the hearing was going to be conducted, what did you do? In other words, the day after or two days, whatever?

A. Well, okay, the first thing I did was, as I said, I went home and got with Greg and he told me that he had been told. He said: Coach Beavers was fixing to leave town. He did not want me, since I had not responded to the letter, he did not want Greg to find out either at school or in the paper or some

other way. He wanted him to know personally. And he said, he took me in his office, and he sat me down and he told me and he said: Dad, I can't play football or anything.

So, at that point, I grabbed the receipt and took off for the post office. And I called, before I left, I called Bo Snowden's office and I said I need to talk to you and he said: Well, I wandered what was going on when we did not get that registered letter from you. I dashed to the post office, got the letter and went to his office immediately, sat down with him.

And I said: Can you please tell me what in the world is going on? And I said: All indications are everything is in order, you know, I visited with you, you've checked me out, Irving has checked me out. Everybody is on the line. Everybody signed this thing. And my last conversation with you was no

problem.

I said now I'm sitting here in front of you with a letter in my hand that says that we have got problems. And he said: Well, Mr. Jones, he said I have never seen this happen. He says I have been around for 27 years, or whatever it is, and he said this has never happended. He said I don't understand it myself.

Q. All right, so what did you do?

A. I started asking him about the meeting. I said: What in the world went on at this meeting? And at first he was kind

counsel, I'll sustain that. You cannot get him to give those details for our information purposes.

MR. BOYD: Your honor, I'm just asking him what he understood because this, I believe, the evidence will show let him -- motivated him to take further action. So I wanted, not for the truth of the matter, and I think that's all Mr. Nolan is asking.

MR. NOLAN: That's all my objection is to.

THE COURT: The Court will admit it for that limited purpose as the information impacted him.

MR. BOYD: Yes, sir.

THE COURT: Not as to whether it was true or

of, you know, reluctant to use --

Q. What did you understand after talking to him that had gone on at the meeting?

A. Well, what I understood from him was that there was bias injected in the meeting. Homer Johnson --

MR. NOLAN: Your honor, we object as to the truth of these matters. I have no objection as to what he heard. As to whether it was actually bias going in or not --

THE COURT: All right, I'll sustain the objection as to the conclusion drawn here. He can talk about facts.

MR. NOLAN: Well, he didn't observe the meeting, so he won't know what went on. He's been told by somebody else.

THE COURT: You are correct,

correct.

MR. BOYD: Yes, sir.

A. He said --

Q. Mr. Jones, what did you understand had happened at the meeting?

A. What I understood happened at the meeting was that he felt that there was bias injected at the meeting through Homer Johnson because Homer Johnson apparently had made some statements about being against transfers, all transfers. He said another indication was that when they made their presentation --

MR. NOLAN: Your honor, excuse me. If it is -- if all we're going to do -- he can say he was disappointed in the meeting. We don't need the details in that to explain the later action.

THE COURT: I believe you do, counsel, to see whether or not, the Court is

not -- is going to depend on other evidence as to the veracity of the information. But as to what his background and basis was for whatever he did. So it's limited to that purpose.

A. He said -- he said and when we made our presentation of Greg at the meeting he said they -- that we changed our story. And I said: What do you mean changed your story? He said: Well, we made the presentation, just like I wrote it up talking about the reasons for moving, commuting, the dental

student, et cetera, an we talked about -- yeah, academics for Gregory was a consideration also.

And because we did not mention those in the same breath, it was stated by Homer Johnson that we had changed our story as we were talking. And I said: Now, wait a minute, I don't understand that. You mean because you didn't mention both subjects at the same time in the same breath you changed your story? He said that's the way I understood him to say. That he had raised a doubt in his mind because we were changing our story.

And then he got on to the subject of -- I said. Well, what other things did they consider? He said: Well, Dr. Poteet started raising the question that he had gotten this

anonymous phone call and a good quarterback. He said McArthur football player was transferring for athletic purposes, was the term I believe he used, to Highland Park High School. And he had received this anonymous call and went on to dwell on the anonymous call for awhile.

There was a discussion at the meeting, according to Mr. Snowden, he said questions were raised about: Wait a minute, what are we doing? We've got a valid form i our hand that's a sworn statement. We have accepted it. We have investigated. The sending school is on the line. They have accepted it and recommended it. Now, what are we doing here?

This is the first time this had been done. And I said: Well, what did they say? And he said: Well, Dr. Powers suggested after -- he said Qualls had gotten up an gotten into the -- some fabricated story about all of this conflict.

Q. Excuse me, are you telling the Court that Mr. Snowden called it a fabricated story?

A. Yeah, he did, he used that term. He said: You know, they had some fabricated story about conflicts that i personally had had with the coaching staff at Irving. They had had problems with Greg. That they had htis big controversy brewing over there. It had the fans divided. The booster club wa divided. It was, youknow, the picture they painted, they said everybody had fist fights

in the stand and all kinds of good stuff. He didn't say those terms, but that was kind of a real heavy on this big conflict and all of that stuff. And he said: Mr. Jones, I know those aren't true because I have talked to Ray Overton and Hobart Lytal.

Q. You were about to say something about Dr. Powers after they went through that.

A. Oh, Dr. Powers, he said during all of this it came up that did Ray overton really know what he signed? He said that subject was thrown out on the table. And they had some discussion on that. And he said Dr. Powers said I think he said Qualls is the one that was talking about maybe he didn't know what he signed. And he said Dr. Powers said -- he said:

Charlie, do you mean to tell me that you don't think a coach that's been in business as long as he has and doesn't know what he signed? Is that what you're trying to tell me, Charlie? As a matter of fact, Dr. Powers told me that himself. That he --

Q. Go Ahead. I'm interested only in what you understood from your conversation with Mr. Snowden.

A. So, he said at that point Powers suggested if there was a big problem with this, why don't we pick up the phone and call Ray Overton,

Q. All right.

A. And why don't we maybe even bring him over. And why don't we maybe even invite the Joneses over here if this is the way we're going to handle this thing? He said

-- I believe he said Powers said are we setting a precedent here. And at that time he said they moved off of that and decided to let Coach Qualls call Coach Overton and see in fact if he wanted to remove his name from the form. And then --

Q. What else did you understand happened at the meeting?

A. Basically anti-Greg Jones per se.

Q. Was there a vote taken to your understanding?

A. Oh, yeah, there was a vote taken, sure, it was unanimous against him.

Q. Now, at that point after talking to Mr. Snowden and being informed of these things, how did that impact you, what did you do?

A. I said do you mind or he said: You might want to talk to Coach Beavers because I may not have, you know, I might --

Q. Who else did you talk to?

A. I talked to Coach Beavers. The next day I went over and visited with him. He told me essentially the same story.

Q. All right, did you talk to anybody else?

A. Briefly talked to Dr. Powers over the phone. And he said I tried. I don't recall when that was. He said I tried, you know, my suggestion was that we maybe get y'all over there at that time, but --

Q. Other than Dr. Powers, Coach Beavers who confirmed what Coach Snowden had told you, did you talk to anybody else?

A. I called back over to Overton and I

said: Coach Overton -- No, I think I went over to Coach Overton and I said: Do we have a problem? In that meeting Coach Qualls says we've got a big problem.

And he says: Mr. Jones, we have never had a problem. I have never had a problem with you, your wife, or anybody else. Never had a problem with Greg. And they talked about all of this controversy, he said, and he said Charlie Qualls called me several times on this and he kept trying to bring all of this in. And he kept trying to tell me that.

MR. NOLAN: Your honor, I object to this for the truth of the matter. For other purposes unknown to me I suppose it's okay but as to whether this is true or not --

MR. BOYD: We understand his objection.

THE COURT: It is sustained for those purposes.

A. And he said I told Charlie that there wasn't any conflict or anything like that. There was competition over here, and they had not been even, you know, I think one year the boy was, one of them was in California, the Hall boy. And the next year, the J. V. and one on the varsity. The only time they had head up competition was the Junior year.

Q. He told that to Qualls.

A. That's what he said he told Coach Qualls. And I said: Well, can you explain to me what's happening here? I thought if the sending school and the receiving school

signed these things and they investigated and presented it to the meeting that we didn't have any problems. He said: We never have. This is the first one.

Q. After talking to Coach Overton, did you talk to anybody affiliated with the Highland Park Independent School District other than the ones you've talked about?

A. I talked to I believe he was the attorney for the school district.

Q. Why did you call him?

A. At the recommendation -- Well, I, in my mind by then, knowing that Homer Johnson controlled four votes in my mind his attitude was already, you know, there's no way that we're going to get Greg Jones' eligible through this committee. I called

him at the recommendation of a friend to find out what to do. And he said --

Q. For the Court's edification, was this Dick Grey?

A. I believe it was, right. Visited with him a little bit about it and he said: Well, what you'll have to do, he said, they've got to change their mind or their decisions are final. They can't be overruled by Austin or anybody else. He said: What you've got to do is they've got to change their mind or the only alternative you've got is to go to the courthouse. I said you mean I've got to sue these people? He said basically unless they --

Q. Did you check with anybody at the Unversity Interscholastic League?

A. My wide did. She made a call.

Q. Did you, after your wife checked with the University Interscholastic League, after her check with them, can you tell us whether or not you ever learned of any appellate process in the UIL?

A. Oh, no. The indication to us was votes are final. UIL does not overrule, and that type.

Q. What was your next course of action?

A. My next course of action is when I got home after work I started calling, well, I got some calls from some people in Highland Park saying: Mr. Jones, we understand what happened to Greg, and we don't believe it, and here is an attorney for you.

I had two or three names of two or three attorneys. And your name came up in conversation through a friend of mine.

Q. All right. Now, you visited with me and what did you decide to do after visiting with me?

A. I decided to go ahead and file the case. I felt that was my only recourse to get a fair impartial hearing to get it in front of a jury or a judge that was totally unconnected with this matter that could understand what we were trying to do here, what I was really trying to accomplish in view of the family situation.

Q. All right. At any time after you filed suit did you ever ask yourself or your family or your representatives, including your attorneys, did you ever ask the UIL to

do anything after you filed suit?

A. The only thing that was asked of them was after we were in the --

Q. No, I'm asking did you ever make a request of the UIL? I'm not talking about --

A. Oh, me? No, I didn't.

Q. Okay. And did you ever instruct your attorneys to ask for any hearings or anything else from the UIL?

A. No, sir, I didn't.

Q. And for clarification, to what body were you working for relief from what had happened at the March 20, 1985 meeting?

A. The courts.

Q. What body?

A. The Courts, the legal system: impartial, unbiased.

Q. At sometime after you filed suit and after depositions were taken in May, did you learn of a request by the UIL concerning another hearing, another meeting?

A. We got a letter from Dr. Poteet inviting us to a meeting. And it said they would do basically the same thing they had done the first time and I didn't see any need to acknowledge it.

Q. Did you instruct me to respond to that?

A. I sure did.

Q. And those are exhibits in evidence, right?

A. I believe they were.

Q. And for clarification, is Plaintiff's Exhibit 2 the letter you're talking about from Dr. Poteet?

A. Yes, sir, it is.

Q. And Exhibit 3, June 20 letter from me to Dr. Poteet, is that the response you directed that I make?

A. That is, right.

Q. All right, sir. Have you ever changed your position from the position you instructed me to make?

A. In that letter?

Q. Yes, sir.

A. No, sir, not at all.

Q. Other than in connection with settlement, just

settlement discussions, have you ever agreed in any way to consider another hearing in connection with any other district commitee of the UIL other than in connection with settlement discussion of the district court of U.S. courts?

A. Other than the judges, personally, none.

Q. Yes.

Q. Did there came a time, Mr. Jones, when you were notified that the UIL was going to conduct a hearing?

A. Yes, sir.

Q. And that was set eventually on August the 9th, 1985?

A. Right, uh-huh.

Q. Did you request that meeting?

A. No, sir, did I not.

Q. Why did you attend?

A. It involved my child and I went over there just to see what would be done this time knowing what had gone on the first time to see if they basically would do it again.

Q. After hearing the testimony from Coach Qualls and the things that he said about you and the coach and about the boys, would you tell the Court how you evaluate his statements? Are they true, false? What are they?

MR. NOLAN: Your honor, his evaluation of somebody else's statements is irrelevant. He can say what I think the facts are.

MR. BOYD: Let me rephrase it, your honor.

THE COURT: Sustain your objection. The question is withdrawn.

Q. Do you recall Mr. Qualls' statement in testimony that he reported to the committee that Coach Overton had told him that you were moving so your boy could get a fair chance to play. Do you recall that testimony?

A. Yes, sir.

Q. Was that true?

A. In my mind it's definitely not true. It was totally a false statement.

Q. Did you ever tell Coach Overton that you were moving so that your son could get a fair chance to play?

A. I did not.

Q. And in connection with any controversy, do you recall Coach Qualls' testifying

that there was a big quarterback controversy at Irving McArthur?

A. Right.

Q. Were you aware of a big controvery at Irving McArthur?

A. I was not aware of a big controversy at Irving McArthur.

Q. Did you attend the games?

A. I attended the game several years.

Q. Did you ever observe controversy, disruption of the fans, of the booster club over any of those quarterbacks?

A. Other than individual players having individual supporters, which some cheer for this person, that person, a normal fan support, no. There was never any animosity, harshness, whatever. There wasn't a big big controversy.

Q. Did you ever hear of any controversy between players?

A. I didn't hear of any that came over the house frequent. I mean they would come over and they would hang around and watch T. V. or whatever. I wasn't aware of any.

Q. Would you tell the Court the actual relationship between the Shawn Hall boy and your son, the actual relationship. Was it controversial or what?

A. They were competitors and each one was trying out for the same position. They

went to each other's homes. Greg has been over to the Halls' house; they've been to the same parties together, they were competing in clean competition. I don't know of any personal problems between them at all.

Q. Can you tell us, do you recall Coach Qualls' statement in his testimony that he reported to the committee that the boys had been competing since the 9th grade head to head and the Hall boy always seemed to get the better edge of it. Do you remember that comment?

A. Right, uh-huh.

Q. Can you tell the Court whether there's any truth to that?

A. Well, in the 9th grade Hall was in California, Greg

was in Irving.

Q. Could there have been any competition while they were in California?

Q. Not that I'm aware. 10th grade?

A Greg was on Junior Varsity, Hall was on varsity as defensive back.

Q. Did they in 10th grade compete with the Junior Varsity quarterback?

A. Not that I'm aware of. Well they went to the games, they sat up in the stands with us, so I don't know of any competition.

Q. So in the 9th and the 10th grade, was there direct competition of any kind between Shawn Hall and your son?

A. No, No.

Q. So Coach Qualls' statement to the committee that since the 9th grade there's been direct competiton and the other boy

seemed to win out, in the 9th and 10th grades, would you tell the Court whether or not that's a true statement?

A. Absolutely false.

Q. Is there even a shred of truth to it?

MR. NOLAN: Your honor, I object. The statement was by Coach Qualls that he had been told by Coach Overton, and not that Coach Qualls was saying that.

THE COURT: We'll take it in the context that you have brought it to the Court's attention, that it was stated,

that he said Coach Overton said this, which Coach Overton has denied.

MR. NOLAN: Right. And excuse me, your honor, Coach Overton said since the 8th grade.

THE COURT: I understand. Since he's been there.

MR. NOLAN: No, no, your honor, there's a distinction here. Coach Overton on the stand related that he told them there had been competition in the 8th grade. He wasn't there, but he had told him that he had been told there was competition.

THE COURT: In Junior High?

MR. NOLAN: Yes, before Coach Overton got there.

THE COURT: Counsel, at this point I'm only interested in McArthur High

School.

MR. NOLAN: Except, your honor --

THE COURT: This is a Junior-Senior year and I'm not going back four years into Junior High School.

MR. NOLAN: But what I'm saying is is that Coach overton said to him.

THE COURT: Because that is picking up old bones too far.

MR. NOLAN: I understand that, your honor, I'm not interested. I don't care about the 8th grade except for this point, if I can just say this, please, Coach Overton said I may have told him there had been competition since the 8th grade

and that Greg Jones had been beat out, but I don't know what happened till I got here in January of his Freshman year.

THE COURT: The record will reflect what he said, counsel.

MR. NOLAN: Yes, your honor, and just so the 9th and 10th are not the only two years that Coach Qualls was referring to about Coach Overton's statement.

THE COURT: He has just simply pointed out that they did not participate in competing position in the 9th, 10th.

MR. NOLAN: Mr. Boyd asked him so that question that Coach Qualls said is untrue. And that's the point I'm getting to, that the statement that Coach Qualls said is not necessarily untrue because they didn't compete in the 9th and 10th grade because he

is saying Coach Overton told me they had been competing since the 8th grade.

THE COURT: Since the 8th grade, would mean the 9th and 10th, counsel.

MR. NOLAN: That's right, your honor.

THE COURT: So I don't care to argue further.

MR. NOLAN: Okay.

THE COURT: Please be seated. I'm not angry, but I just don't care to argue that point. It's very clear to me.

MR. NOLAN: I think I just hadn't made my point, I'm sorry, your honor.

THE COURT: You have.

DIRECT OF LARRY JONES - BY MR. BOYD

Q. Mr. Jones, do you recall Coach Qualls' statement that he testified to up here that he told the committee that there was bad feelings between your family and Coach Overton?

A. Yes, sir, I do.

Q. And you've already been over that. Will you tell the Court if there's any truth to that whatsoever?

A. None whatsoever.

Q You've already talked about your contacts with the coach, correct?

A. Yes, sir.

Q. Will you tell the coach, so the record is clear, did you send your wife down to the practices to try to influence the coach and play your boy more?

A. No, sir. No, sir, I didn't.

Q. Did you send anybody else down there to try to influence that coach, get your boy to play more?

A. I occasionaly would drive by when I would be getting in from work. Most cases it would be just at the end of practice; sit in my car up there for a minute or two, and most time when I got there they would already be breaking up and going over for their last session. And then I would go home. You know, I would be there maybe five or ten minutes and go home.

Q. I would like to take you to the August 9, 1985 meeting that the UIL called. And you've already testified why you went

there. Did you intend to even call any witnesses at that hearing?

A. It wasn't my hearing.

Q. And why did you go if you didn't want to go?

A. As I said, basically because it involved my son and I wanted to just find out. I knew what they had done the first time. I just wanted to see if they would do it again the second time, or if they were trying to clean up what they did the second time.

Q. All right. Mr. Jones in connection with filing this suit, did you agree to pay me reasonable and necessary attorneys fees for your representation?

A. I sure did.

Q. And whatever my customary fees are

were discussed with you and you agreed to that?

A. Yes, sir.

MR. BOYD: We pass the witness, your honor.

THE COURT: We'll have about a ten minute recess, then we'll have cross-examination.

(Whereupon a recess was had.)

MR. BOYD: I have a few more questions.

THE COURT: Are you ready. We're ready to proceed.

Q. Mr. Jones, I will show you Exhibit 13, which purports to be a letter from Mr. Nolan addressed to me, your attorney,

and ask if you can identify it.

A. This is a notice of the rehearing of the 9 AAAAA District Executive Committee.

Q. Called by whom?

A. Called by Mr. Nolan and UIL.

Q. Okay, sir.

MR. NOLAN: I have no objection to that letter, your honor.

THE COURT: It is admitted.

MR. BOYD: Pass the witness, your honor.

THE COURT: Very well, cross-examination.

MR. NOLAN: If I could have a question was read back.

(Whereupon the last question was read back.)

CROSS-EXAMINATION

BY MR. NOLAN:

Q. Mr. Jones, isn't it true that you really attended that second meeting to see if the -- you attended that on purpose, in fact, you brought your attorney with you so that you could have a second hearing as to the eligibility of your son Greg?

A. It's true I brought my attorney with me to that meeting. And we had tried before this meeting to have a meeting in a neutral site as requested by the federal judge.

Q. I'm sorry, I just want to talk about the August 9th, 1985 meeting that was held at Mesquite. Isn't it true that you attended that meeting specifically for the purpose of working

within the UIL frame work within the UIL system to have them decide this dispute?

A. No, sir, I didn't. I didn't think we'd get a fair verdict there.

Q. Well, whether you thought that you would prevail at that meeting or not, in fact, the reason that you went there in an attempt to have to settle this dispute concerning your son at that meeting?

A. I didn't go there for that purpose. As I said, I didn't anticipate a change in verdict.

Q. Mr. Jones, I suspect that when you attended the meeting simply to watch because you were curious or whether you attended it because you wanted to work with the system and see if this could be resolved, that's sort of what your intent was, wouldn't that

be sort of hard to figure out, wouldn't it?

A. What my intent was in attending that meeting?

Q. Yes, sir.

MR. BOYD: Your honor, I only object to the question to the extent are you asking it's hard for him to figure it out?

MR. NOLAN: Hard to be figured out by someone else.

A. Would you ask that again, then? I don't exactly now what --

Q. You have testified today that you attended basically

as a spectator, you went -- you wanted to just watch. And I've asked you the question, I said: Isn't it true that you came and you brought your attorney and he cross-examined witnesses because you went there to work within the system, to work within the University Interscholastic League to work with the system and get this disopposed, resolved, and you said: No, that's not the reason.

A. I try to explained to you about this judge requesting a hearing and we --

Q. I'm sorry, I just prefaced my question, and I said: Your intent as to why you really went there, that would be hard for other people to figure out, wouldn't it?

A. It might be.

Q. Just like your intent as to why you

moved might be hard for other people to figure out?

A. Not based on facts.

Q. They would have to look at facts to try and figure out from those facts why you moved or why you attended that hearing, is that correct?

A. And the conduct of the hearing and such as that.

Q. Mr. Boyd is your attorney, isn't he?

A. Yes, sir, he is.

Q. I'm going to show you what's been marked as Defendant's Exhibit Number 1 and ask you if you can identify that for me.

A. It's a letter saying we've got a summary hearing.

Q. Who is that a letter to?

A. It's to you.

Q. And who is that letter from?

A. Sam Boyd.

Q. All right. Did you look at Mr. Boyd's signature?

A. Yes, I did.

Q. Does that appear to be his signature to you?

A. Appears to be.

Q. Would you please read the first sentence of the first full paragraph on page 2 of that letter?

A. "In an attempt to work within the system we attended a hearing on Friday in an effort to resolve the dispute." --

Q. I'm sorry, would you loudly please read only the first.

THE COURT: Again a little slower.

A. "Within an attempt to work with the system, we attended that hearing on Friday, August the 9th, in an effort to resolve the dispute."

MR. NOLAN: Thank you.

MR. BOYD: Your honor, at this time we would make a motion under the rules that Mr. Nolan not preclude the witness from also reading from the top of the page, which I think would be very instructive. It's exactly what the witness has said about Judge Buchmeyer. We would make a motion at this time that

he be allowed to read that.

MR. NOLAN: I don't have any problem with them introducing -- the whole thing is in evidence.

THE COURT: The Court right now will allow it, call for that so we can have the context of the remark.

MR. NOLAN: Okay, you want the paragraph before that?

MR. BOYD: I really think that from "Dear Peter", because it's very short. From "Dear Peter" through what he just read. It's very short.

MR. NOLAN: Let me read that so we can make sure we can hear it:

"Dear Peter, the State District Court has granted a hearing on the motion for summary judgment to be hearing at 9:00 A. M.

on August 19th, 1985. Further, the Court is aware that you had previously agreed with this firm to use diligence in filing your response to your motion for summary judgment by August 12th, 1985. In order to facilitate your circumstances, a filing up to and including Friday, August 16th, 1985 will be acceptable. Although we very much appreciate the efforts which you have made in attempting to accomplish a fair and equitable settlement of this dispute, it has now become obvious that an out of court settlement will be next to impossible."

Let me stop just here. This is a letter dated August 12th, 1985.

THE COURT: What is the Plaintiffs Exhibit Number --

MR. NOLAN: It's Defendant's Exhibit 1.

THE COURT: Thank you, continue.

MR. NOLAN: "There are several reasons for this statement. First, you are certainly aware that the family formally objected to an invitation to attend a second executive hearing for fear of continuing manifestations of bias and prejudice towards Greg Jones. The UIL, and the Executive Committee refused to accommodate the settlement structure which we attempted to pound out during our hearing with Judge Buchmeyer, therefore, we were between a rock and a hard place when notified that the Executive Committee would none the less hold a second

hearing with or without the Jones' presence. In an attempt to work with the system, we attended that hearing on Friday, August 9th, 1985, in an effort to resolve this dispute."

MR. NOLAN: Do you want me to read the whole letter?

MR. BOYD: Yes, sir.

MR. NOLAN: "Such effort was unfortunately futile. Once again the Executive Committee rejected the only credible evidence which demonstrated the lack of any move on the Joneses part for athletic purposes. Further, the form lacked the impartiality for which we had hoped. Instead, the presence of the the previous committee called for the same prejudice and

basis, which contaminated the first meeting. The presence of Homer Johnson, coupled with that of Mr. Qualls, served to remind the voting members of their priorities. In our opinion therefore, the new hearing was a failure insofar as we had hoped for an impartial setting. Thus, in order to hopefully facilitate Greg's interest" --

The rest has to deal with summary judgment motion.

MR. BOYD: Yes, I think so. It's very short.

MR. NOLAN: "Thus, in order to hopefully facilitate Greg's interest into UIL sponsored sports, we must push forward in the state district court. As you know, our motion for summary judgment was filed at the end of June 1985. It is now close to mid

August and we are awaiting the response to our summary judgment. As per my letter July 22nd, 1985, and the request of the court, we are therefore expecting a response no later than August 16th, 1985. Due to the school year time table, it has become impairative to finally and fully resolve this dispute so that Greg may be giventhe chance to participate in UIL sponsored sports. We appreciate your efforts in resolving these matters, but he time is now upon us to determine whether or not a trial would be a necessity before the fall athletic activities are under way at Highland Park High School. Should you have any questions or comments, or if we can be of any assistance to you, please do not hesitate to call this

office. Very truly yours. Sam Boyd."

A. Would you repeat that question and I'll give you -- can I give you my interpretation of working within the system. You said UIL. To me, working within the system was the Judge as I tried to get you to let me say. When he requested an impartial neutral ground that was within the system and you said the UIL. No, I didn't go to work within the UIL system. We had already been in the UIL system at that time.

Q. And is that the federal judge you're talking about?

A. Yes, sir.

Q. And at that time did your attorney inform you that your case had been sent to state court because the federal court said that there weren't intervening questions, no

questions were raised which he could even consider?

A. Had he done what now, sir?

Q. Had your attorney informed you that you were no longer in federal court because the federal court had said: I've looked at these questions that you've raised and you don't have any questions, even assuming all of facts that you have said, you don't have any questions that I can even consider. Had he told you at that time that it had been remanded to state court.

MR. BOYD: objection, that is not what the order says,, it does talk about the Marony case. The Marony case itself does not state there were no constitutional issues made, particularily the familial privacy area.

THE COURT: Let's go into that area. The Judge did remand the case to the state court.

MR. BOYD: He did. Made no ruling on the merits and Mr. Nolan submitted no motion for ruling on the merits.

THE COURT: Does the order --

MR. NOLAN: Yes, your honor, I'll read the order.

THE COURT: Let's have the order just for our own information.

MR. NOLAN: The order. In view of the --

THE COURT: Give us the date of the order, please.

MR. NOLAN: 5th day of August, 1985. "Order: In view of the attached opinion in Marony v. University Interscholastic

League, and they give the cite, this Court has no jurisdiction in the Plaintiff's constitutional attacks upon a State Board ruling concerning eligibility for high school athletics does not raise a substantial federal question. Accordingly, this case is remanded to the 193rd Judicial District Court of Dallas County, Texas."

Now, I won't paraphrase it, let's just use that order I just read. Had your attorney informed you that your case had been remanded just as that federal court said?

A. It was going back to the state court, right.

Q. And certainly he knew that it was no longer in federal court when he wrote that letter?

A. Apparently he did.

Q. So he couldn't have been working within the federal court system?

A. I didn't mean strictly federal court, I mean the Court system itself. Working within the system to me interprets working within the Court, not -- you said the UIL --

Q. I understand.

A. -- system.

MR. NOLAN: At this time, I would move for the admission of Defendant's Exhibit Number 1.

MR. BOYD: My only objection is that it does concern settlement matters. And I think those are privileged. But that was the entire intent of the letter since the entire rehearing structure was part of the

settlement, if a proper decision was rendered. There was never a discussion even before Judge Buchmeyer about giving up any legal rights and the Court will notice in the letter, I urged Mr. Nolan to respond to the summary judgment.

Nobody is giving up anylegal rights in the court. And the rest of that, which has to do with another hearing related to an effort to get a favorable result from the District Executive Committee. So that the courts would not have to be bothered. That was the whole purpose.

THE COURT: The Court does admit the exhibit over your objection specifically in view of the testimony back and

forth about what was his presence there. The Court considers this would be informative, not only to this Court, but to an appellate court.

MR. NOLAN: And I would simply point out to the Court that this letter was written a week after this case was taken out of the federal court.

MR. BOYD: I don't know what Mr. Nolan's statement means, but I don't guess there's really an objection since he's not testifying, but I don't see that that has a thing to do with settlement or me asking him to respond to our legal motions in the letter. I just don't know what his comment referred to.

MR. NOLAN: Just pointing out for whatever it's worth, your

honor.

THE COURT: All right, sir.

Q. Mr. Jones, would you please tell the Court and me what it is that you're here complaining about.

A. The way the decision was reached at the initial meeting based on bias, anonymous phone calls, fabrications, and personally attacking me and those assumptions and assertions, and the fact that as apparent, a decision that adversely affected my child and those conditions, when he knew those conditions. I could not let it go unchallenged. I had to seek recourse.

Q. If in that first hearing you had been there to tell everything you knew and Coach Overton had been there to tell

everything he knew, and those people had not known anything about you or your son and had not been biased or prejudiced and they would have let you say whatever you wanted to say and listened to everybody and made a decision, would you have had a complaint?

A. Depending on the decision. I mean --

Q. Let's say it had been adverse to you.

A. If it had been an adverse decision, depending on how it was reached. If they said I had to sell my house, had to do this, or had to do that, and ignored the fact that we moved. The issue here is why did we move? Did we move for athletic purposes? I did not move for athletic purposes. I moved for family purposes. And that is the reason of the move.

Now, if they construe the fact that he is a quarterback, then that's the thing they're xeroxing in on, I would have a problem with their decision. If if is based on our needs of the family unit at the time and they base it on that, and it was an adverse decision, and I didn't need to move, then I probably wouldn't have any problem with that type decision. But to put it in the light of school against school, position, support, you know, that takes it away from the real meaning of why I moved. And that clouded -- and that was the dominant theme in my whole thing.

Q. So your answer was yes to my question?

A. My answer was if it was an adverse decision that I felt was improperly reached, I would still take this course.

Q. And by improperly reached, you mean if you disagreed with their judgment, even if you had no reason to believe that they were biased?

A. Yes.

Q. Or prejudiced? If you disagreed -- simply disagreed with the judgment, because you thought they had made the wrong decision based upon the facts?

A. I sure would. That's right. If I know why I moved, and I know that it's not for athletic purposes, I sure would challenge it.

Q. So it wouldn't make any difference in that first hearing if they had called you

and they had called Coach Overton and had not been prejudiced, if they would have come up and said: Mr. Jones, we disagree with you, and we disagree from Coach Overton, and from what you told us, Coach Overton, we're going to hold it's a move for athletic purposes. That's your basic complaint that they had disagreed?

A. No, sir, if I had been invited to the first meeting as a witness, I would have done what I had done here. I would have brought all of the parties together, and I would have told it to them. I would have brought the property owner in. I would have brought my son in. I would have brought myself in. I would have brought Coach Overton in. I would have brought Highland

Park in.

Q Well, Highland Park was there.

A. We would have all been there. And then we would have been able to have an exchange of information.

Q. Okay, Highland Park was there. You would have brought yourself and Coach Overton and Greg?

A. No, Steve.

Q. Oh, I'm sorry, Steve.

A. And the property owner.

Q. And you would have brought in your aunt?

A. Right.

Q. Is there anything that your aunt or Steve could have told the committee that you couldn't have told them?

A. I could tell them, but, you know, hearing it from me versus hearing it from

them they say: Well, that's hearsay, speculation, maybe.

In other words, if I had known I was going to be put on trial at this thing, I would have tried to put as much witnesses in my favor to explain the situation as I could.

Q. Where did Steve live when he was going to Baylor and lived in Waco?

A. He lived in Waco.

Q. In a dorm?

A. He shared an apartment with three other boys. They had a two bedroom.

Q. How did he get around in Waco?

A. He had a car down there.

Q. When he was in Waco, did he visit the home a lot in Dallas?

A. No, sir, he didn't. He would come home frequently. Not frequently, every other week, or once a month, something like that, or we would go down occasionally to a ballgame. He wasn't up and down the highway all of the time to Waco.

Q. So he was mainly in Waco and y'all were mainly in Dallas.

A. Yes, sir, he was also active at Baylor University in student activities and Vice-President of the student body and such as that. So he was active on the campus and spent a lot of time in Waco.

Q. Was Greg active at the McArthur

Irving at his high school in Irving?

A. Was he active?

Q. Right. You mentioned I think the Fellowship of Christian Athletes?

A Yes, sir, Fellowship of Christian Athletes. He was on the annual staff, worked in that area. He was student of the month one time. And he, well, primarily centered around athletic programs: football, basketball.

Q. What was his position with, or did he have a position with the Fellowship of Christian Athletes?

A. Not that I'm aware of. He was just a member. I don't believe -- he never did hold -- he never ran for office. He chose not to run for any political office at the school.

Q. When you -- when your attorney was talking to you asking you questions at that August 9th hearing, why don't y'all go into the repair of the cars as you told the Judge today.

A. I said we had commuting problems, and I think you challenge the people that if they had questions that arose, they were to ask me for the information. And I didn't, at that time, didn't think of it. Commuting problems was what I had.

Q. Did you mention any commuting problems other than being on the freeway and

time and distance?

A. Up and down the road all of the time. At that meeting I don't think I did. The problem there relates to time.

Q. When did the school start in the fall of 1984 for Steve, when did fall semester start?

A. I believe it was the last week in August. First of September, last week of August. Last of August, I believe it was.

Q. So before Labor Day?

A. Yeah, I think it was. I'm not sure on that.

Q. Did this year start before or after Labor Day? That's just this month.

A. I'm trying to remember when Tech started and when they started. I'm getting the two confused. I don't know for sure.

Q. At the District 9 AAAAA district hearing that you attended on August the 9th, why didn't you tell the committee about the family concerns specifically Steve's sleeping problems, taking the pillow and the blanket with him?

A. I didn't -- I don't know why I didn't. Again, if they had questions about anything I said, you instructed them to ask.

Q. Or about how hard dental school was andyour concern with him keeping up?

A. I would say that's an assumed. I mean if you -- if you know anything about higher education, and if you have a student then you're going to be concerned, and you say these people are educators. They should have understood that as a given.

Q. Why didn't you explain to them about

the economics, the talk with your aunt, and the percentage returns that you told the Court today that you would make on your money?

A. Again, being educators, I assumed they knew something about the value of real estate and something about equity, something about return on investment, you know, I thought he was speaking to an intelligent panel there.

Q. Do you think -- you don't mean to slide us or the Court by explaining that to us today, do you?

A. No, sir, I don't, but I have -- after those meetings, you know, I'm putting, dotting every "i", crossing every "t", whatever you want to say. I mean if it takes the facts, and if

you want all of the facts, I'll give you all of the facts.

Q. Do you recall when you first talked to Steve about his commuting problems or when he first talked to your?

A. It was during this first year the subject came up. As I said, I got to where I had -- it was in the second semester there. I got to where I would challenge him sometimes on: Do you really need to make this trip? You know, and that was the first time the issue arose. And at that time, I don't know exactly when that time would have been.

Q. When did you first learn of subchapter "h"?

A. When I visited with Mr. Boyd. And we started reading the -- yeah that was the first time when I visited with Mr. Boyd.

Q. Is that the visit you had with him

about this litigation?

A. During one of the visits about the litigation or early on we started reading on, I mean, I don't know the exact date, but it was during a visit to Mr. Boyd's.

Q. Do you know when Greg first learned about subchapter "h"?

A. I don't know if Greg knows about subchapter "h".

Q. Before this litigation, before you went to see Mr. Boyd, I take you you didn't know Mr. Boyd before this litigation started?

A. No, sir, I didn't.

Q. Okay. Before that time, before litigation, did anyone tell you that the schools had adopted subchapter "h"?

A. I didn't have any reason to talk to anybody about what they had adopted.

Q. Would it be sake to say before this, at that time did you rely upon subchapter "h"?

A. Before the litigation did I rely upon subchapter "h"?

Q. Yes.

A. Specifically?

A. Yes.

Q. Not specifically I didn't.

Q. Did you rely upon the schools using subchapter "h" before this litigation started?

A. I relied upon the schools using the UIL rules and I believe that is included in that manual there.

Q. Okay, specifically before the litigation started, did you rely upon the schools specifically using subchapter "h"?

A. No, sir.

Q. I meant before?

A. No.

CROSS OF MR. JONES - BY MR. NOLAN

Q. To your knowledge, do you know if the basketball coach at Highland Park ever called Coach Overton or any other coach or school official at Irving?

A. I don't know, because I don't know the basketball coach.

Q. You don't know if they called when Greg got there the first to check on his eligibility?

A. No, I certainly wouldn't.

Q. While you were at Irving and before you moved to Highland Park, did you ever tell any of your friends or other parents who had children in Highland Park that you wished that Greg had more playing time as quarterback? Did that subject ever come up?

A. We would go to some games with some friends of ours and sure, I'm a parent, I wanted him to be number one. I would like to

have seen it more, yeah, it probably came up in conversation: We would like to see him in the game more.

Q. So, that's not something you kept a secret to yourself, you would talk about that if the subject came up?

A. I didn't dwell on the subject, you know, I didn't go out and harp on it. If we're talking about how is your boy doing such as that, well, you know, he got in the game, I would like to see him do more, yes.

Q. At that second meeting, the meeting of August 9th, 1985, the only one that you were able to attend, did anyone stop

you from telling anything you wanted to that District Executive Committee?

A. No, they didn't.

Q. Was your -- did I not only ask you a couple of basic questions and what happened? Did your attorney ask follow up questions after that?

A. Yes, you did.

Q. Who suggested that you call Dick Grey?

A. I don't remember who it was.

Q. Was it somebody from Highland Park?

A. It was in the -- I don't know whether it was with the schools or in the community about, like I say, I got two or three calls along at a given time there saying, you know, I can recommend an attorney.

Q. Do you know how these people who called you, how they knew about --

A. I really don't. I didn't even know

them at the time. I did not know of some of the people at the time.

Q. Were the people that called you from Highland Park, do you remember their names?

A. I sure don't.

Q. Did you say why they called you up out of the blue if you didn't know them?

A. They said they had heard what had been done to Greg by this committee and how the decision was reached and they thought

he got a raw deal on it, was one of the terms that one of them used.

Q. Did they call you shortly after you had talked to the Highland Park people?

A. I don't know what time frame it was in. I had already talked to the Highland Park people, but I don't know how long a time frame or short a time frame or anything else.

Q. Did they call you before you went to see Mr. Grey?

A. I didn't see Mr. Grey.

Q. Or talk to Mr. Grey, I'm sorry.

A. Some of them did. There weren't, but, I don't remember how many calls I got. Three or four calls.

Q. Do you recall how long it was before you saw Mr. Boyd and you filed lawsuit?

A. Between what?

Q. Between the time you first saw him

and the time you first filed your lawsuit?

A. No, I don't. We had an initial meeting and I explained what I had found out. And he said -- we talked about retainer, et cetera, and he said --

MR. BOYD: Your honor, at this time, I don't a particular objection as long as it's just time.

MR. NOLAN: I don't need the conversation. I just want to know how long it was before you saw him and you filed the lawsuit.

A. I saw him within, I would say within a week. I talked to him initially at the initial meeting. I talked to him over the phone first, and, you know, I said what was going on -- I would like to talk to you about this. And I went in to his office and I saw him and then I guess within that week we got the thing rolling. Or that was my understanding. I mean after that visit with him, we kicked it off then as far as I knew.

Q. No, you said you had some calls from people telling you you ought to sue and then you got some people that suggested Mr. Boyd's name. Do you recall who suggested Mr. Boyd's name?

A. My cousin and a personal friend.

Q. And how did your cousin find out about the situation?

A. He knows Mr. Boyd personally and

socially.

Q. How did he find out you were in need of an attorney?

A. He's my cousin. He's my aunt's son.

Q. Is this something that you had talk to him about?

A. His mother apparently had talked to him about it.

Q. How did your aunt find out about it?

A. I told her.

Q. That's what I wanted to know.

Now, you said upon questioning from Mr. Boyd that you believe after your -- that you never asked the UIL for anything after a certain period of time. You weren't the one that asked for the setting or you didn't ask them for anything?

A. That's right.

CROSS OF MR. McNABB - BY MR. NOLAN

Q. All right. Do you remember Mr. Nolan asking you if you were aware of a federal ruling involving the Marony case?

A. Yes, sir.

Q. And were you also made aware by your attorney of the recent Supreme Court of Texas case named Witworth that said federal standards are minimum and that Texas Courts do give additional protection above and beyond federal standard?

MR. NOLAN: Your honor, I object, that's totally irrelevant. If he wants to argue that case, I don't have any problem with that.

THE COURT: All right, give me a moment, please.

THE COURT: I believe we're extending it further than we need to go. It was alluded to as to the legalities of appeal

Q. And I just didn't catch after what point in time you didn't ask them for anything. Did you ever ask them

A. I didn't -- I wasn't aware I was asking them for anything. I mean --

Q. So at any point in time, you never asked them for anything?

A. Excluding a neutral site for a housing where we might could reach a settlement.

Q. And that was in our discussion with Judge Buckmeyer?

A. Yes, it was.

Q. Excluding that.

A. Not that I'm aware of, I never asked for anything.

MR. NOLAN: That's all of the questions that I have at this time.

THE COURT: Very well, redi-

rect.

REDIRECT EXAMINATION

BY MR. BOYD:

Q. So far as you know after the unfavorable decision of the Executive Committee was your family called to the UIL headquarters the last that you can recall seeking any kind of information?

A. Are you talking about the first meeting?

Q. Yes, sir.

MR. NOLAN: Your honor --

THE COURT: Hold your answer, please.

MR. NOLAN: I know what he's talking about. I'm not sure the record will reflect that it's the March 20th.

A. Okay, March 20th.

Q. Okay, will you tell the Court when you called the UIL headquarters?

A. I didn't call them, my wife did.

Q. I understand. When was it though, what point in time?

A. It was the same day we found out that Greg had been denied.

Q. Okay.

MR. NOLAN: Your honor, as to the content of that telephone conversation, before he said I called or I thought he said that. I may have misheard it.

THE COURT: I think he said my

wife called.

MR. NOLAN: I would object to any of the conversations about the truth of the matter. That his wife called. I have no objection, of course, but what she was told by the UIL, and whether it's true or not, I do have an objection to that.

THE COURT: If she were here she could testify, but I will sustain the objection.

Q. After the call to the UIL, were you then aware of any appellate procedure at all to higher levels?

A. Not at all after that phone call.

and things of that nature. I think we're just going further than we need to go.

MR. BOYD: Yes, sir.

Q. Do you recall Mr. Nolan's question about whether or not you relied upon subchapter "h"?

A. Yes, sir.

Q. Do you recall your response that you relied upon them using the rules?

A. Right.

Q. As far as you know, is subchapter "h" a part of the UIL Constitution and Contest Rules?

A. In my mind they are. They're in the book.

CROSS OF MR. McNABB - BY MR. NOLAN

MR. NOLAN: I object, your honor, that's totally irrelevant as to what's in his mind at this time as to whether it is or not. Whether it is or not is before the Court. And that's certainly relevant as to the issue, but his opinion is not relevant.

THE COURT: He's already gone over this one time with you. I realize this is redirect examination, and the Court considers that he pretty well stated his position at that time. I don't know that -- you may finish up, but I don't think it will change what he's already said.

MR. BOYD: I don't want to do that. I just want him to make full the picture, and I think I can do that in another question or two.

THE COURT: Let's see if you can.

Q. In connection with the UIL's processing of your son's previous athletic participation form, could you tell the Court whether or not you thought there were any standard of fairness involved, your own opinion?

A. I assume that there was. I assume that we had some recourse on a decision such as this. In other words, I thought we could just go in and they would some way to say let's call another meeting or another panel or whatever the situation might be and correct this situation.

Q. Okay.

MR. BOYD: We have no further questions, your

honor.

THE COURT: Anything else?

RECROSS-EXAMINATION

BY MR. NOLAN:

Q. Mr. Jones, one question: You said I assume there was a way to correct the decision. If there was away to go back and have it heard again, would you have chosen that way if they would have had a procedure like that?

A. If it, you know, stipulated that factual evidence, valid evidence, not hearsay, not speculation, not anonymous phone calls, you know, not fabrications, in other words, tell the truth is what I'm saying, if that were all there, and if you have the opportunity to speak, and if you are beforehand told of what is expected in one of these meetings, that is bring and fire your best shot, because this is the last chance you're

going to get, yes, I think so. But I think it is lacking and I think they need to do it.

Mr. NOLAN: I have no further questions.

MR. BOYD: Thank you, your honor.

THE COURT: All right. The witness may step down.

MR. BOYD: Your honor, I call myself, if Mr. Nolan has not objection on attorneys fees.

MR. NOLAN: No objection, and I don't require that he be sworn, your honor.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

(6)

NO. 86-1873

* * * * * * * * * * * * * * *

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL,

Respondents

* * * * * * * * * * * * * *

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS**

**BRIEF FOR THE UNIVERSITY INTERSCHOLASTIC
LEAGUE IN OPPOSITION**

* * * * * * * * * * * * * *

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ATTORNEYS FOR RESPONDENTS

QUESTIONS PRESENTED

1. Whether the Texas Courts properly held that Petitioner failed to prevail on a substantial Federal Constitutional issue.

2. Whether the Texas Courts are required to specifically address appellate points which do not raise substantial issues.

3. Whether the Texas Supreme Court properly refused Petitioner's Writ of Error.

PARTIES BELOW

In the Court below, the Petitioner herein, Gregory Jones, by and through his next friend, Larry Jones, was Petitioner. The Respondent, University Interscholastic league, and the Executive Committee of District 9AAAAA, were Respondents.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. 86-1873

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UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL,

Respondents

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**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS**

**BRIEF FOR THE UNIVERSITY INTERSCHOLASTIC
LEAGUE IN OPPOSITION**

* * * * * * * * * * * * * *

OPINIONS BELOW

The Supreme Court of Texas overruled the Petitioner's Motion for Rehearing on the 21st day of January, 1987. The Supreme Court of Texas overruled the Petitioner's Application

for Writ of Error on the 17th day of December, 1986. The Court of Appeals' opinion from which the Petitioner appealed to the Supreme Court of Texas was entered on the 18th day of September, 1986.

JURISDICTION

The Order of the Supreme Court of Texas overruling the Petitioner's Motion for Rehearing was entered on the 21st Day of January, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. §1254.

STATUTES INVOLVED

United States Code, Title 42

Civil Rights Act

42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C. §1988

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the Court having jurisdiction of such civil or criminal cause is held as far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment of the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, Title IX of Public Law 92-318, or the VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the

United States, a reasonable attorney's fee as part of the costs."

U.S. CONST. amend. V

"No person shall be denied due process of law or be deprived of life, liberty, or property, without due process of law."

U.S. CONST. amend. XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

1. The University Interscholastic League is the state-wide organization of public schools in Texas formed to regulate elementary and secondary inter-school competition. The member schools agree to abide by the U.I.L. Constitution and Contest Rules in the regulation of inter-school competition. Section 409 of the U.I.L. Constitution and Contest Rules provides as follows:

Section 409 Changing Schools for Athletic Purposes:

> (a) INELIGIBLE: A student who changes schools for athletic purposes is not eligible to compete in varsity league athletic contest(s) at the school to which he moves for at least one calendar year.

2. Petitioner, Gregory Jones, was a junior in high school at Irving-McArthur High School in the Fall of 1984. The school is located in Irving, Texas, a suburb of Dallas, Texas. His family were long time residents of Irving, and his parents had worked in Dallas at the same jobs for many years.

Petitioner has played football at McArthur since his sophomore year when he was the starting quarterback for the junior varsity team; however, in 1984 Petitioner found himself the third string quarterback on the varsity team, and he would very likely be only the second string quarterback his senior year if he stayed at McArthur. The week after his bench warming season ended, in the middle of the fall of 1984 school semester, Petitioner's

family "moved" to another suburb of Dallas, Highland Park, and enrolled Petitioner in Highland Park Highschool. The move was not made because of a change in jobs; the Jones retained ownership of their Irving home and "rented" a home in Highland Park from an aunt of Larry Jones. Coincidentially, Greg Jones was a good passing quarterback who would not be able to play as much in the run oriented offense of Irving- McArthur, but who might be able to play at Highland Park because they had just lost their star passing quarterback to graduation and for the first time in years, no heir apparent waited in the wings.

A telephone call to school officials suggested that Petitioner had moved to get a better chance at starting quarterback. Principals from the local school district met with Petitioner and his parents to determine if this was so. Petitioner's father testified that the family had moved nine miles to save gasoline money and reduce commuting distances. The school principals decided that

the move was more greatly influenced by the family's desire to see Petitioner start as quarterback for Highland Park, because the commuting problems and the availability of the house existed long before the move, yet the move was timed immediately after the end of Petitioner's football season on the bench.

3. Petitioner filed suit in State District Court in Dallas, Texas alleging numerous violations of constitutional rights. Respondents removed the case to the United States District Court for the Northern District of Texas, Dallas Division, and then moved to dismiss the lawsuit for the failure of Petitioner to even state a Federal Claim. The United States District Court agreed, and the case was remanded to the State District Court to try state law issues because Petitioner had failed to even allege a federal cause of action. In a fence-straddling order, the State Court improperly substituted its judgment for those of the school principals, and decided that Petitioner should play

football; but even this desire by the State District Court to be "fair" could not conjure up violations of the United States Constitution to justify any application of 42 U.S.C. §1983 et. seq. or the award of attorney's fees.

4. Petitioner appealed the trial court's denial of attorney's fees. This appeal did not raise a substantial question, and the appeal was dismissed by the Texas Court of Appeals for the Fifth Supreme Judicial District of Dallas. The issue of the power of the trial court to substitute its judgment for the judgment of the local school officials, raised by Respondent, was declared to be moot since Petitioner had already graduated from High School.

5. The Texas Supreme Court overruled Petitioner's Application for Writ of Error and subsequent Motion for Rehearing.

ARGUMENT

I.

The Texas Courts Properly Held That Petitioner Failed To Prevail On A Substantial Federal Constitutional Issue

Two types of issues were presented to the Texas Courts of Appeals: (1) the issue of the validity of the trial court's action in substituting its judgment for the local schools' judgment; and (2) the issue of a constitutional violation that would give rise to thousands of dollars of attorney's fees. The issues are intertwined. If the local schools acted unconstitutionally, then their actions were not valid. Petitioner attacked the schools' actions based upon Due Process, Equal Protection and Familial Privacy issues. Briefly, all of these attacks are frivolous.

A. Due Process.

The Federal Constitution's due process guarantees do not protect a student's interest in participating in extracurricular activities. See Niles v. University Interscholastic League, 715 F.2d. 1027, 1031 (5th Cir. 1983), cert. denied _____ U.S. _____ (1984); Mitchell v. Louisiana High School Athletic Ass'n., 430 F.2d. 1155, 1158 (5th Cir. 1970). Petitioner's desire to be the starting quarterback on the varsity team in no way involves a threatened deprivation of liberty or property interests necessary to invoke the Federal constitution.

B. Equal Protection.

Petitioner was not a member of a suspect class, nor were their any constitutionally protected rights involved in his desire to be the staring quarterback. Grounds supporting a finding of a denial of equal protection because Petitioner's treatment was deliberately based upon an unjustifiable

standard such as race, religion, or other arbitrary classification, were not even alleged. See Oyler v. Boyles, 268 U.S. 448 at 456 (1962). The Texas Court of Appeals found no showing of the actual and purposeful discrimination imagined by Petitioner. He was given more protection than any student in the last thirty years. The desire of the school district to grant him more rights than the average student was not found to be a denial of equal protection.

C. Familial Privacy

An allegation of improper denial by a state body of a student's right to participate in interscholastic athletics fails to raise a substantial federal question. Mitchell v. Louisiana High School Athletics Ass'n., 430 F.2d. 1155, 1157-58 (5th Cir. 1970). Petitioner did not allege that he could not move or live with his family. He simply could not hop from high school to high school in search of a team and continue to play varsity

football. Just as in Niles v. The University Interscholastic League, 715 F.2d. 1027 (5th Cir. 1983), cert. denied _____ U.S. _____ (1984), "the encroachment of the [U.I.L.] rule on the right to travel and upon the freedom of family associations [is] 'both limited in scope and insignificant in magnitude "citing Walsh v. Louisiana High School Athletic Ass'n., 616 F.2d. 152, at 158 (5th Cir. 1980) cert. denied, 449 U.S. 1124, 101 S.Ct. 939, 67 L.Ed. 2d 109 (1981). The right of association is a fundamental right and does protect associational activities relating to the family, but the decision to disallow Petitioner to play varsity quarterback does not significantly encroach on this right, because there is no similar fundamental right to play football.

Playing football in Texas is important. Being the starting quarterback is even more important, but the decision as to who fills that role does not involve due process or familial privacy, and without some form of

unjustifiable standard such as race or religion or some constitutionally protected right, it does not involve equal protection.

II.

The Texas Appellate Courts Are Not Required To Write Opinions Addressing Points Which Do Not Raise Substantial Issues.

Rule 90 of the Texas Rules of Appellate Procedure requires that the Texas Court of Appeals address only substantial issues which are raised on appeal. Petitioner has never raised a substantial constitutional question. He has known this since the United States District Court remanded his case for failing to allege any Federal cause of action. The fact that the Texas Court of Appeals devoted no more written response to his constitutional allegations than the Federal District Court did, should not have surprised him. There is no statute or rule of the Texas Supreme Court that requires Courts of Civil Appeals to take up the assignments of frivolous issues in appellant's brief and dispose of them

seriatim. See Sanger v. First National Bank of Amarillo, et. al., 170 S.W. 1087 (Tex. App.-Amarillo 1914).

Even if there were such a useless requirement, there is no requirement for the Texas Supreme Court to grant a Writ of Error to simply affirm the holding of a lower court, even if "...the Supreme Court is not satisfied that the opinion of the Court of Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal..." Just as this Court need not write an opinion addressing each point raised by Writ of Certiorari when denying it, neither Due Process nor Equal Protection principals force the Texas Supreme Court to write an opinion refusing a Writ of Error.

III.

The Texas Supreme Court Properly Refused Petitioner's Writ of Error

The Texas Supreme Court refused to overturn years of federal precedent that

decisions on who plays what position on the local high school football team should be left to the local high school officials. The cases of Mitchell v. Louisiana High School Athletic Ass'n., 430 F.2d. 1155 (5th Cir. 1970); Hardy v. University Interscholastic League, 759 F.2d. 1233 (5th Cir. 1985) and Niles v. University Interscholastic League, 715 F.2d. 1027, (5th Cir. 1983), cert. denied ____ U.S. _____ (1984). 104 S.Ct. 1289, 79 C.Ed. 2d. 691 (1984) completely foreclose Petitioner's claims. See Maroney v. University Interscholastic League, 764 F.2d. 403 (5th Cir. 1985). The refusal of Petitioner's Writ of Error was proper.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,
BUNTON, NOLAN, ODÉ & COOPER

By: Peter A Nolan
PETER A. NOLAN

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing have been mailed by certified mail, return receipt requested, No. P-063-197-088, on this 19 day of June, 1987 to the following counsel of record:

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86 1873

Supreme Court, U.S.
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AUG 3 1987
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CLERK

No. A–743

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

REPLY BRIEF TO UNIVERSITY INTERSCHOLASTIC LEAGUE, ET AL.'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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No. A–743

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TO THE SUPREME COURT OF THE UNITED STATES:

I.

THE RESPONDENTS' EDITORIAL ABUSE

Throughout the pendency of the instant litigation, the Respondents have consistently twisted the facts and ignored the now–binding Findings of Fact and Conclusions of Law entered by the Trial Court in

this cause.[1] The Respondents' Opposition Brief is no exception. The Record rejects the Respondents' "creativity":

Respondents' Opposition Brief:

p. 5) "Petitioner ... [w]ould very likely be only the second string quarterback his senior year if he stayed at MacArthur."

Record: Coach Overton of MacArthur stated that the Petitioner had as promising a chance of being the starting quarterback at MacArthur as did the other candidate. (S.F. at 242–46, 248–49, 256; Tr. at 46–47, 71–72). Athletics had nothing to do with the Jones family's move. (Findings of Fact Nos. 7, 16, 17, 18, 22, 25; Conclusions of Law Nos. 3–4).

Respondents' Opposition Brief:

p. 5–6) "Petitioner's family 'moved' [t]o Highland Park ... [and] 'rented' a home in Highland Park." (Insinuation of improper family move).

Record: The family did not move for athletic purposes; rather, the Jones family moved to improve the quality of their life, reduce living expenses and facilitate another son who was attending the Baylor College of Dentistry. (Findings of Fact Nos. 4–7, 25, 27, 38; Conclusions of Law 3–4).

Respondents' Opposition Brief:

p. 6) Greg Jones "might be able to play at Highland Park because they had just lost their star passing quarterback to graduation..."

Record: There is no Finding of Fact which supports this aberrant editorialization.

Respondents' Opposition Brief:

p. 6) "A telephone call to school officials suggested that Petitioner had moved to get a better chance at starting quarterback."

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[1]The Respondents conspiculously made no cite to the Record in "support" of their hollow arguments.

Record: This remark refers to the infamous anonymous telephone call that was improperly inserted into the hearing's deliberations by Dr. Poteet, the Executive Committee's Chairman. Dr. Poteet's shenanigan was condemned by the Trial Court as constituting a violation of the Petitioner's right to a fair hearing. (Finding of Fact No. 14; S.S.F. 2–5). Furthermore, the UIL's own witnesses admitted that such suspect tactics had no place in school administrative procedures and violated the spirit of the UIL Constitution and Contest Rules. (Findings of Fact Nos. 13–18, 23–24, 26, 33–39; Conclusions of Law Nos. 2, 5–6, 13; C.C.R. at § 118 (1985)).

Respondents' Opposition Brief:

p. 6) "Principals [m]et with Petitioner and his parents to determine if this was so." (i.e., the Petitioner was provided an opportunity to be heard).

Record: This is a blatant misstatement of the facts. The anonymous phone call occurred prior to the first Executive Committee Meeting. Neither the Petitioner nor his family were advised, in the first instance, of the alleged anonymous phone call, nor were they provided any opportunity to be heard in order to rebut its patent invalidity. This was true, despite the expressed prehearing intention of the Garland (majority vote) representative to reject the Greg Jones' transfer request. (S.F. at 78–79, 93–96, 141, 210, 212–18, 237–56, 283, 291–93, 348, 357–58, 567–69, 576–77, 580–91, 595, 600–01; P.S.F. at 41, 72–75, 77–79, 105, 116–17; Findings of Fact Nos. 15, 26, 29).

Respondents' Opposition Brief:

p. 7) "[The] Respondents moved to dismiss the lawsuit for the failure to even state a Federal claim. The United States District Court agreed..."

Record: The Respondents removed the case to the Federal District Court on the basis of Federal claims. Thereafter, the United States District Court did not dismiss the suit, but rather

remanded the case to State Court for a trial on the merits. The remand Order did not limit the Petitioner's claims.

Respondents' Opposition Brief:

p. 7) "In a fence–straddling order, the State Court improperly substituted its Judgment for those of the school principals..."

Record: The Trial Court's Order was anything but 'fence–straddling.' Instead, the Trial Court entered scathing Findings and Conclusions which condemned the UIL and the Executive Committee for their respective violations of Greg Jones' Equal Protection guarantees under the Federal standards declared in Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L.Ed. 220 (1886).

Respondents' Opposition Brief:

p. 8) "The State District Court [c]ould not conjure up violations of the United States Constitution to justify any application of 42 U.S.C. § 1983 et seq. or the award of attorney's fees."

Record: The Trial Court did fail to award the Petitioner his reasonable attorney's fees as it determined in Finding of Fact No. 41. Subsequent to the entry of the Final Judgment, the Petitioner filed his timely Motion to Modify Final Judgment in which he requested that the Trial Court, pursuant to 42 U.S.C. § 1983 et seq., award the fees determined in Finding of Fact No. 41. The Trial Court failed to rule on the request for fees, despite its unquestionable reliance on Yick Wo, supra. Thus, the Petitioner perfected his cross–appeal thereon to the Court of Appeals. The Appellate Courts refused to rule on the Petitioner's perfected Point of Error regarding an award of attorney's fees.

Respondents' Opposition Brief:

p. 8) "Petitioner appealed the Trial Court's denial of attorney's fees. This appeal did not raise a substantial question, and the appeal was dismissed by the Texas Court of Appeals..."

Record: This statement is not a true reflection of the Court of Appeals' Order. Rather, the Court of Appeals dismissed the appeal

based solely on its determination of mootness, because Greg Jones had since graduated.

Respondents' Opposition Brief:

p. 8) "The issue of the power of the Trial Court to substitute its judgment for the judgment of the local school officials, [w]as declared to be moot since Petitioner had already graduated from High School."

Record: Nowhere does the Court of Appeals' Opinion address the Trial Court's alleged "substitution of its judgment for that of school officials."

Hopefully, the Court will pay special attention to the Record of the instant suit. The Respondents should not be permitted to prevail, simply because they have audaciously presented twisted and misleading editorializations. In truth, the tone and content of the Respondents' Opposition is not so different from the manner in which they "blackballed" the Petitioner.

II.

THE TEXAS COURTS NEVER REJECTED THE PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS

A.

The Texas Appellate Courts' Additional Constitutional Violations

To begin, neither the Court of Appeals nor the Texas Supreme Court ever ruled that the Petitioner had failed to prevail on a substantial Federal constitutional issue. (App. I). To reiterate, the Court of Appeals dismissed the appeal and vacated the Trial Court's Judgment based solely on mootness. Although the single issue of the Petitioner's per se participation in HPHS athletics had become moot, other "live"

issues remained to be adjudicated. See Petition for Writ of Certiorari at 13–27.[2]

Furthermore, the Court of Appeals acquiesced in the Trial Court's Findings and Conclusions, none of which were overturned. (App. I). The Findings are now binding upon the Respondents. See Petition for Writ of Certiorari at 13 n. 11. Nonetheless, the judicial failure of the Texas Appellate Courts to consider the Petitioner's Points of Error constituted additional errors of both Equal Protection and Due Process proportions.[3]

The Respondents have attempted to obscure the Petitioner's right to a ruling on his properly perfected Points of Error regarding attorney's fees. The issue as to the Petitioner's properly perfected Point of Error receiving an appellate ruling does not hinge upon whether or not Greg Jones raised a substantial, Federal constitutional question.[4] Texas Courts have long recognized the absolute right of a litigant to

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[2]As the Petitioner received the entirety of his requested relief, he was entitled to fees as a "prevailing party." Hewitt v. Helms, 55 U.S.L.W. 4907 (U.S. June 19, 1987).

[3]The Respondents insist upon mixing "apples with oranges" in their attempt to obfuscate the important Federal policies at stake. In particular, the Petitioner is no longer asserting any rights under the Due Process clause except for that violation described hereinabove under II(A). The Respondents' assertion to the contrary, is a "smoke screen" to hide the fact that Greg Jones has not alleged a Federal constitutional right to play in extracurricular activities. However, Greg Jones has always maintained that: (1) he was entitled to be treated as other similarly situated students; which meant that (2) he would not be subjected to the vicious self–dealing of an Executive Committee whose "raison d'etre" was to ensure Highland Park's 1985 football season downfall. (Findings of Fact Nos. 9–11, 13–21, 23–24, 26–28, 32–35, 37–39).

Last, it should be reiterated that all of the Executive Committee members swore that impartiality and fairness were essential to the proper administration of school affairs, including athletics. See Petition for Writ of Certiorari at 7–11.

[4]Of course, as indicated in the instant Petition, Greg Jones raised material Federal constitutional questions dealing with Equal Protection and familial privacy violations. The Respondents' conclusion regarding the Federal District Court's remand Order is incorrect. The United States District Court, in remanding the case, cited Maroney v. University Interscholastic League, 764 F.2d 403 (5th Cir. 1985). However, the Maroney case specifically recognized that a denial of "freedom of familial choice" is a substantial Federal question. The District Court, apparently, overlooked that Greg Jones had expressly raised a Federal question dealing with familial choice.

have points of error ruled upon by the Appellate Courts. Greg Jones properly perfected his claim for attorney's fees as the prevailing party. Yet, the Appellate Courts ignored that issue, notwithstanding Greg Jones' entitlement to a ruling thereon. See Petition for Writ of Certiorari at 20–21, 23.[5]

B.

Equal Protection

In their Opposition, the Respondents have absolutely ignored both Yick Wo, supra, and Spring Branch v. Stamos, 695 S.W.2d 556 (Tex. 1985), cert. denied, ___ U.S. ___, 106 S. Ct. 1170, ___ L.Ed.2d ___ (1986), respectively, which confirm the instant Petition's validity. The Respondents' conscious refusal to distinguish or present any controverting authority to the Petitioner's well–supported argument should constitute a tacit admission. See Petition for Writ of Certiorari at 15–17, including n. 12.

Simply, Greg Jones never sought more rights than those provided to other students. Greg Jones established his right to be provided the same rights as other similarly situated students. In other words, his properly completed PAP Form, which had resulted in automatic approval for every other transfer request over the last thirty (30) years, should have been reviewed under the same standard as other requests. See Petition for Writ of Certiorari at 5–7.

Last, the Respondents' statement, without citation to any authority, that the Texas Court of Appeals found "no showing of the actual and purposeful discrimination imagined by Petitioner," borders on the fantastic. In fact, the Texas Appellate Courts refused to sustain the UIL's challenges to the forty–one (41) Findings and the seven (7)

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[5]Again, the Respondents failed to present any controverting authority or distinguish the Petitioner's well–settled Texas precedent. The Respondents cite, only, Sanger v. First National Bank of Amarillo, 170 S.W. 1087 (Tex. Civ. App.—Amarillo 1914, writ ref'd). However, the Sanger case is inapposite for the reason that Greg Jones, unlike the Sanger plaintiff, requested a specific ruling on his Point of Error. The Petitioner herein objected to no ruling at all.

Conclusions which underscored the glaring reality of the Respondents', "purposeful discrimination."

C.

Familial Privacy

Once again, the Respondents inexplicably refused to distinguish the Petitioner's legal authorities supporting the Petitioner's familial privacy claims. First, Greg Jones has never alleged a constitutional right to participate in extracurricular athletics. Thus, it is perplexing, indeed, that the Respondents can contend that Niles v. University Interscholastic League, 715 F.2d 1027 (5th Cir. 1983), does not, in fact, support the Petitioner's familial privacy claims.

In Niles, the Court defined the alleged specific familial privacy infringement as: (1) the prohibition on a single student's ability to travel between the mother's locale in California and the guardian's in Texas; in order to (2) continue to participate in interscholastic athletics. Niles, supra at 1031. The Court found that the trespass against a lone student did not rise to a constitutional level under the following analysis:

1) No constitutional right exists to participate in interscholastic sports; therefore,

2) The "encroachment" of the rule on the child's freedom of familial association was "limited in scope and of insignificant magnitude."

Niles, supra at 1041.

Unlike the Plaintiff in Niles, Greg Jones has not alleged a familial privacy violation in an attempt to circumvent the fact that there is no fundamental right to play football in Texas. Rather, the "gravamen" of the Petitioner's complaint is the Executive Committee's arbitrary, capricious and prejudiced decision–making process which punished the Jones family. See Petition for Writ of Certiorari at 17–19.

III.

REQUEST TO AFFIRM CONSTITUTIONAL PRECEDENT

The instant Petition does not ask this Court to "overturn years of Federal precedent" regarding who plays what positions on a local high school football team. See Opposition at 15. Greg Jones did not claim a constitutionally protected right to play interscholastic sports.

On the other hand, Greg Jones has established that: (1) the Executive Committee acted in an arbitrary, capricious and discriminatory manner and treated him differently than all other similarly situated students; (2) the Jones family's move was genuinely motivated; and (3) the family suffered a violation of their fundamental right to familial privacy. (Findings of Fact Nos. 4–11, 13–22, 23–25, 26–28, 32–35, 37–39; Conclusions of Law Nos. 3–4, 5–6). Furthermore, the Petitioner's Federal claims are well–supported by Federal law. Yick Wo, supra; Spring Branch, supra; Niles, supra; Maroney, supra; Southerland v. Thigpen, 784 F.2d 713, 715 (5th Cir. 1986); Whalen v. Roe, 429 U.S. 589, 600 n. 26, 97 S. Ct. 869, 876–77 n. 26, 51 L.Ed.2d. 64 (1977); Carey v. Population Service International, 431 U.S. 678, 684–86, 97 S. Ct. 2010, 2016, 52 L.Ed.2d. 675 (1977).

IV.

CONCLUSION

The Texas educational environment needs an injection of integrity. The complicity of the Governor of our State in the S.M.U. "athletes for pay" scandal makes evident that moral discipline is lacking at even the highest levels of Texas educational administration. The many fine students and faculty members in our State deserve this Court's dethroning of "king football" and, correlatively, the resurrection of individual dignity.

WHEREFORE, PREMISES CONSIDERED, Greg Jones respectfully prays that the Supreme Court grant his Petition for Writ of Certiorari, that the Supreme Court reverse or modify the Judgments of the Courts below to the extent that Greg Jones recover the reasonable and necessary attorney's fees determined below, or alternatively, that the action be remanded to the State District Court for consideration as to

whether or not additional attorney's fees should be awarded in connection with Petitioner's Petition to this Court, and for such other and further relief, whether at law or in equity, to which the Supreme Court believes that Greg Jones may be justly entitled.

Respectfully submitted,

BOYD & FULTS

By _____
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been mailed, certified, return receipt requested to Peter Nolan, Esq., counsel for Respondents, on this the 31 day of July, 1987.

_____
SAMUEL L. BOYD